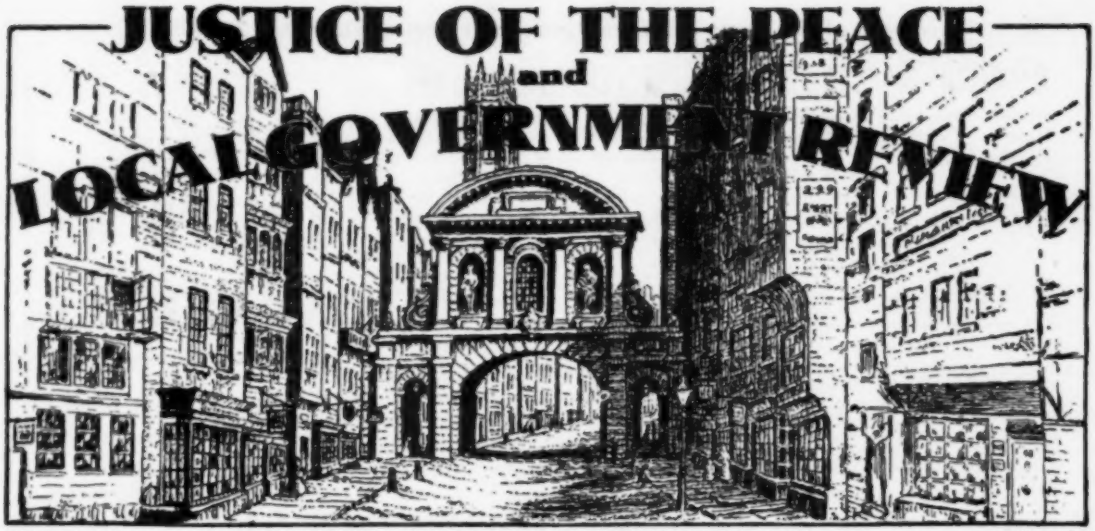


VOL. CXV. LONDON: SATURDAY, DECEMBER 22, 1951. No. 51

Christmas Number

CONTENTS

REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt 10 a.m. Thursday*

Published by Justice of the Peace Ltd., Little London, Chichester, Sussex
Telephone: Chichester 3637 (P.B.E.) *Telegraphic Address*: Justocjon, Chichester

INQUIRIES

YORKSHIRE DETECTIVE BUREAU (Hoylands), **Ex-Detective Sergeant**. Member of B.D.A. and F.B.D. Divorce—Confidential Enquiries, etc., anywhere. Over 400 agents in all parts of the U.K. and abroad. 1, Mayo Road, Bradford. Tel. 26823, day or night.

PARKINSON & CO., East Boldon, Co. Durham. Private and Commercial Investigators. Instructions accepted from Solicitors only. Tel.: Boldon 7301. Available day and night.

West Dean Rural District Council

Appointment of Engineer and Surveyor

THE Council invite applications for the appointment of Engineer and Surveyor at a salary to be fixed within the scale of the Joint Negotiating Committee for Chief Officers (£750—£1,000). The population of the area is 18,173. An allowance in respect of travelling expenses will be made on the usual scale up to 10 h.p.

Applicants must be Corporate Members of the Institute of Civil Engineers, or hold the testamur of the Institute of Municipal and County Engineers, or an equivalent professional qualification.

The duties will include the design of Council houses, the supervision of contractors and the settlement of their accounts, the design, installation and management of water works and sewerage works, the administration of building byelaws and town planning matters, and any other duties which may be assigned to the office.

Housing accommodation will be made available if required by the successful applicant.

The appointment will be subject to three months' notice, on either side, and to the provisions of the Local Government Superannuation Act, 1937.

Applications, giving full particulars of age, experience, previous local government service and the date upon which the applicant could commence duties, with the names of two persons as referees, must be received by the undersigned not later than Monday, January 21, 1952.

H. A. JONES,
Clerk to the Council.

Council Offices,
Coleford, Glos.
December 14, 1951.

County Borough of Wolverhampton

Appointment of Law Clerk

LAW CLERK required in Town Clerk's Legal Department. N.J.C. Conditions. Salary A.P.T. IV (£530—£575). Post superannuable. Duties mainly conveyancing and drafting of agreements. Experience of Small Dwellings Acquisition Acts an advantage. Applications, with names of two referees, to the Town Clerk, Town Hall, Wolverhampton by January 5, 1952.

City of Plymouth

Appointment of Female Probation Officer

APPLICATIONS are invited for the appointment of a female probation officer for the City of Plymouth. Applicants must be between the ages of 23 and 40 unless already serving as full-time probation officers. The appointment and salary will be subject to the Probation Rules, 1949-1950, and the successful applicant may be required to pass a medical examination. Applications, stating age, qualifications and experience, accompanied by two recent testimonials, should reach me not later than January 5, 1952.

EDWARD FOULKES,
Secretary to the Probation Committee.

Justices' Clerk's Office,
Greenbank,
Plymouth.

CHANCERY DIVISION

(HARMAN, J.)

Oct. 16, 17, 1951

Re ADOPTION APPLICATION No. 52/1951

Child—Adoption—Residence in England—Application by wife of colonial civil servant—Applicant living with husband in Nigeria and returning to England for periods of leave—Intention to rejoin husband in Nigeria, with adopted child, after obtaining order—Adoption Act, 1950 (14 *Geo.* 6, *c.* 26), *s.* 2 (5).

An application for an adoption order under the Adoption Act, 1950, was made by a district officer in the colonial service and his wife. The husband's work involved his being permanently in Nigeria, except for three months' leave every fifteen months when he returned to England, his native country. The wife lived with the husband in Nigeria, returning to England with him when he came on leave. They usually stayed with his or her parents while in England, but they had recently purchased a house in England and they intended to live here permanently after the husband's term of service should come to an end, which, in the normal course, would be after seven years. Wishing to adopt a child, they arranged with an adoption society for it to be put in their care when they returned to England in July, 1951. The application for the adoption order was made by the wife after the child had been in her care and possession for three months, as required by s. 2 (6) (*a*) of the Act of 1950, the husband having been obliged to return to his duties in Nigeria. The wife intended to join the husband in Nigeria, taking the child with her, as soon as possible after obtaining the order.

HELD: whether an applicant resided in England, within the meaning of s. 2 (5) of the Act of 1950, was in each case a question of fact; "resident," within the meaning of the Act, denoted some degree of permanence, and, while it did not necessarily mean that the applicant had his home in this country, it meant that he had his settled headquarters here; on the facts of the present case, the wife was not resident in England; and, therefore, under s. 2 (5) an adoption order could not be made in her favour.

ADJOURNED SUMMONS for an order authorising the applicants, a husband and a wife, to adopt an infant under the Adoption Act, 1950.

The husband having returned to his duties in the Nigerian Colonial Service before the application was heard, abandoned his application. The wife remained in England and persisted, but, as she intended to join her husband in Nigeria as soon as possible after obtaining the order, taking the infant with her, the question arose whether she was resident in England within the meaning of s. 2 (5) of the Act of 1950 so as to enable the court to make an order in her favour.

Denys B. Buckley for the applicants.

W. F. Waite for the Official Solicitor (acting as guardian *ad litem* for the infant).

HARMAN, J.: This is a matter in which I should be disposed to reserve my judgment, but it is a matter of urgency for the applicant, and, as I have come to a conclusion, I propose to state it and not to wait to put it in the form I would wish it to take if I had had more leisure. It is an application for an adoption order under the Adoption Act, 1950. The application is made in the names of two persons, a husband and wife, who ask for authorisation to adopt the infant jointly. In view of the facts I should have no hesitation in acceding to the application on its merits, but the question which confronts me *in limine* is whether I have the jurisdiction to do so.

The material facts are these. The husband occupies a position in Nigeria. He is a district officer in the Nigerian Colonial Service. That involves his living permanently in Nigeria during the term of his service. Every fifteen months

he gets leave, which is of three months' duration or thereabouts, according to his term of service. During that time he comes back to England which is his native country. In the past his wife has accompanied him to Nigeria and there consorts with him, and she comes back here when he comes back on leave. In the past, during those three-monthly periods, they have lived either with his parents or with her parents while they were in England. During a leave which the husband has just completed they purchased a cottage where they intend to set up their home, and they have bought some furniture for it. They have not yet taken possession of it, although they are in a position to do so. The husband's term of service will, in the normal course, come to an end in about seven years, and he and his wife intend, when that event happens, to return to live permanently in England. Being without children, they determined to adopt a child. They found one which was suitable, and it was put into their care by one of the adoption societies when they came home on leave at the beginning of July, 1951. The three months' period, which I shall refer to more particularly in a moment, having elapsed at the beginning of the present sittings, they were in a position, having complied with the other formalities which the Adoption Act, 1950, imposes, to apply to the High Court for leave to make the adoption, but, before the matter came on, the Official Solicitor, acting as guardian *ad litem* of the child, as he always does in these applications, expressed the view that it was not possible for an order to be made in favour of the male applicant, on the ground that he had returned to his duties in Nigeria before the order had been made. His wife, however, stayed behind on purpose to qualify, intending to leave this country with the child and take him to Nigeria as soon as possible after the order was made.

It seemed to me that that raised questions of great difficulty, because, under s. 2 (5) of the Act of 1950, the adopter must be a person resident in this country, and one is immediately confronted with the difficulty of construing the word "resident." The legislation relating to adoption starts with the Adoption of Children Act, 1926, which was the principal Act until 1950. Section 2 (5) of the Act of 1926 provided:

> "An adoption order shall not be made in favour of any applicant who is not resident and domiciled in England or Wales or in respect of any infant who is not a British subject and so resident."

In the original sub-section, therefore, residence and domicil were connected. That sub-section was amended by the Adoption of Children (Regulation) Act, 1939. That Act dealt chiefly with adoption societies, but, by s. 8 (2), as amended by the Postponement of Enactments (Miscellaneous Provisions) Act, 1939, s. 2 (2), a new sub-section was substituted for s. 2 (5) of the Act of 1926. It reads:

> "An adoption order shall not be made—(*a*) in favour of any applicant who is not both domiciled in England and Wales or in Scotland and resident in England or in Wales, or (*b*) in respect of any infant who is not both a British subject and resident in England or in Wales."

In the Adoption Act, 1950, this was put differently. Section 1 (1) of the Act of 1950 provides that an application may be made only by a person domiciled in England or Scotland. There is nothing about residence in s. 1. Section 2, which deals with the restrictions on making adoption orders, does not deal with domicil, as domicil is a pre-condition applying to the applicant, but by s. 2 (5):

> "An adoption order shall not be made in England unless the applicant and the infant reside in England, and shall not be made in Scotland unless the applicant and the infant reside in Scotland."

Then, by s. 2 (6):

> "An adoption order shall not be made in respect of any infant unless—(*a*) the infant has been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the order; and (*b*) the applicant has, at least three months before the date of the order, notified the welfare authority within whose area he is for the time being resident of his intention to apply for an adoption order in respect of the infant."

The effect of s. 2 (5) and s. 2 (6) (*a*) is, apparently, that there must be physical custody of the infant by the applicant for three months in England because otherwise it is not possible to satisfy s. 2 (6) (*a*). By s. 8 (1) an application for an adoption order may be made to the High Court or to any county court or

> ". . . court of summary jurisdiction within the jurisdiction of which the applicant or the infant resides at the date of the application."

Thus, residence at the date of the application is expressly mentioned in that sub-section. By s. 27 (1) (*b*) an adoption society is prohibited from placing the infant "in the care and possession of a person resident abroad, unless a licence has been granted," so that residence abroad and residence in England are obviously quite distinct states of things for the purpose of the Act. Section 27 (2) refers to the delivery of the infant "into the care and possession of a person resident in Great Britain," and s. 28 (1) contains a reference to "a person who is resident in Great Britain" in connection with the supervision which welfare authorities are directed to have in cases pending an adoption. By s. 28 (4) a person into whose care and possession an infant has been placed is called a "custodian," and, by s. 32 (1) and s. 32 (2), if he changes his residence while the infant is in his care and possession, he has to give notice of the change to the welfare authority of the area where he has been residing and of the area into which he is moving. Section 34 deals with the functions of child protection visitors, who have the duty of inspecting the homes of custodians residing in the area of the authority employing the visitor. Section 39 (1) and s. 39 (2) refer to a person "resident abroad," and s. 40 (1) refers to "a British subject resident abroad."

Throughout the Act, therefore, one has "resident in England," or "resident in Great Britain," and "resident abroad" as being two things which are the converse one of the other, and that seems to make it difficult to suppose that under this Act, unlike the fiscal Acts, a person may be resident in two places. For the purpose of the Income Tax Acts a person may be resident in one place for one part of the year and in another place for another part of the year by virtue of the fact that he has two residences available to him and he has a habit of resorting for more than temporary purposes to two jurisdictions, but that does not seem to fit the scheme of the Adoption Act, 1950. So one comes back to the construction to be given to s. 2 (5), which prohibits the making of an adoption order unless the applicant resides in England. It has been pointed out to me by counsel that "resides" is an ambiguous term. The authority for that, if authority be needed, is *Ex p. Breull. Re Bowie* (1), a bankruptcy case, where JAMES, L.J., said (16 Ch.D. 486):

> "There are cases in which it has been judicially decided, and I think rightly, that the words 'residence' and 'business' have no actual definite technical meaning, but that you must construe them in every case in accordance with the object and intent of the Act in which they occur."

COTTON, L.J., agreed with that statement, adding (*ibid.*, 487):

(1) (1880), 16 Ch.D. 484.

"They are ambiguous words, and may have different meanings according to the position in which they are found."

I think one may usefully look at a definition of the word "reside" which VISCOUNT CAVE, L.C., cited in *Levene* v. *Inland Revenue Comrs.* (1), where he said ([1928] A.C. 222):

". . . the word 'reside' is a familiar English word and is defined in the OXFORD ENGLISH DICTIONARY as meaning 'to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place'."

Inland Revenue Comrs. v. *Lysaght* (2) decided that the question whether a person was "resident" in the United Kingdom for the purposes of the Income Tax Act, 1918, was a question of fact for the commissioners.

In the present case also, in my judgment, it is a question of fact: Does the applicant, the wife, reside in England? My first impression is that she clearly does not; neither does the husband. They reside in Africa, where his work is. They come home to England for a holiday and stay with her parents or his. They intend to stay in a house of their own in the future. They intend to come and reside here when his work is done and he can retire from his service. It is admitted that the husband does not reside here, because he has not persisted in his application, but the suggestion is that, if and when he comes back here for a week, or lands here in an aeroplane and is physically present here, he can be said to reside here. That seems to me a difficult proposition. Counsel for the applicants did not, I think, wish to go quite as far as that. He admitted that some degree of permanence was necessary, and that a mere transient visitor who happened to be here when the application was made did not, by that fact, satisfy the qualification of residence required by the Act of 1950, but he said that the *quantum* of residence was a matter of degree, that residence for the time being was enough, and that while the applicants were on leave here, they were for the time being resident here. I should say they were for the time being staying here, and I do not think the two things are the same.

The difficulty has really arisen out of a judgment of EVERSHED, J., in *Re W.* (3). This was a considered judgment and it has given rise to the present position. In that case there was a joint application by a colonial civil servant and his wife to adopt a child. The applicants owned a house in England in which they lived during the periods when they were home. There is, however, one difference between that case and the one now before me, in that in *Re W.* (3) the wife intended to remain in England after the child was handed to her care, and not to return to Africa with her husband. It was, therefore, clear that on any view she was resident in this country and there was no objection to making, as the learned judge did make, an order in her favour. The real difficulty in that case was whether or not he could make an order in favour of the husband. It was argued that the husband had a home here, that for fiscal purposes he was resident here because, having a home available, he was resident here in any year he set foot in this country, according to the well-known ruling of the Income Tax Commissioners on that subject. The learned judge found himself unable to say that he resided here. After referring to the income tax decision, which I think he regarded as artificial, the learned judge said:

"As I construe [the Adoption of Children Act, 1926,] residence in fact within the jurisdiction is referable to the power given to the court to impose

(1) [1928] A.C. 217.
(2) [1928] A.C. 234.
(3) (1946), unrep.

conditions on the making of an order as specified, for example, in s. 4 of the Act of 1926. I therefore come to the conclusion that I am unable to make an order in the male applicant's favour."

He went on in these terms:

"When the male applicant returns to this country, the order can be varied and made in favour of both applicants."

I should take those words to mean that, when the husband had finished his service abroad and returned to live permanently in this country, he would be qualified as a person resident here, but, I am told, a different view was taken by a judge in chambers, for, when the husband returned on leave in 1948, an order was made in his favour although he intended to go back to Africa shortly thereafter. As a result, apparently, of that case, a practice has grown up in the last two years under which, for an adoption order to be made, it has been necessary only to find that the applicant was physically within the borders of the country at the moment when the order was made. On the other hand, even if his residence, his home, and his avocations were admittedly here, the order could not be made in his favour if he was out of the country on the morning when the judge happened to be asked to make the order. Indeed, it was lately suggested to me that a university don, who had left the country for some two months to deliver some lectures, was not a person qualified to have an order made in his favour, because he was not resident here at the time of the application for the order.

I cannot believe that any view which leads to such a conclusion is right. A more sensible meaning than that must be given to the word "resident." Counsel for the applicants suggests that it can be found in the period of three months imposed by s. 2 (6) (*a*) of the Act of 1950 as the period during which the applicant must be here and in possession and charge of the child, and that that is the kind of residence which is meant. He contends that it is enough if the applicant lives here for three months or so before the order is made, because he is then resident here for the time being. Counsel for the infant suggests that the applicant must not only be resident here, but must have no immediate intention of being resident elsewhere. It is a striking fact that a child which is adopted does not become a ward of court, nor is the court bound to make any conditions whatever about where the child shall reside in the future. Having satisfied itself that the adopters are suitable persons, that they have the means, and, I suppose, the accommodation, which is likely to lead to the child's advantage, the duty of the court is finished. Counsel for the applicants contends that it does not in the least matter if the applicant goes abroad immediately after the order is made. As a matter of merits, of course, it matters very much. As a matter of jurisdiction, I think it does not matter. One must be able to postulate at the critical date that the applicant is "resident," and I think that that is a question of fact. "Resident" denotes some degree of permanence. It does not necessarily mean that the applicant has a home of his own, but it means that he has his settled headquarters in this country. It seems to me dangerous to try to define what is "resident." It is very unfortunate that it is not possible to do so, but, in my judgment, the court must ask itself in every case: Is the applicant resident in this country? In the present case, when I ask myself that question in respect of the wife, I can only answer: "No. She is merely a sojourner here during a period of leave. Like her husband, she is resident in Nigeria where his duties are and whither she accompanies him, in pursuance of her wifely duties." I do not think the applicants in this case are residents in England at present, although they may be hereafter.

I much regret having to arrive at this conclusion, particularly in view of

the fact that during the last two years three orders, I think, have been made on a footing which seems to be inconsistent with the judgment which I have just felt bound to deliver. I hold that there is no jurisdiction to make an order in favour of the female applicant, any more than I can make it in favour of the male applicant. I consider the course which has been followed in recent years wrong, *viz.*, that, because an officer in the colonial service or a person employed in any other avocation abroad comes back to this country on a purely temporary holiday, he is a person in whose favour an order can be made. I feel bound to refuse the application.

Application refused.

Solicitors: *Boulton, Sons & Sandeman* (for the applicants); *Official Solicitor* (for the infant). R.D.H.O.

KING'S BENCH DIVISION

(Lord Goddard, C.J., Slade and Devlin, JJ.)

Oct. 25, 1951

WARING v. WHEATLEY

Streets—Obstruction—Information—Order made by corporation—Omission of word "wilful"—Town Police Clauses Act, 1847 (10 *and* 11 *Vict., c.* 89), *s.* 21.

At a court of summary jurisdiction the appellant was convicted on an information charging him that he unlawfully did cause a certain vehicle to wait between the hours of 8 a.m. and 7 p.m. on a certain road in respect of which there were notices exhibited prohibiting the waiting of any vehicle on any such road, contrary to art. 1 of an order made by the Hereford Corporation on Dec. 11, 1950, under s. 21 of the Town Police Clauses Act, 1847. Section 21 of the Act gave power to the corporation (as successors to the commissioners mentioned in the section) to make orders preventing the obstruction of the streets in the neighbourhood of places of public resort, and provided: "and every wilful breach of any such order shall be deemed a separate offence against this Act, and every person committing any such offence shall be liable to a penalty not exceeding 40*s*." The corporation inserted a paragraph in the order providing: "Any person acting in contravention or committing any wilful breach of this order shall be guilty of an offence . . ." HELD: that the information, having omitted the word "wilfully" did not disclose the offence named in the statute, and was therefore, bad, with the result that the conviction was bad also.

CASE STATED by Hereford justices.

At a court of summary jurisdiction at Hereford, an information was preferred by the respondent, Frank Wheatley, charging the appellant, Edwin Waring, that he unlawfully did cause a certain vehicle to wait between the hours of 8 a.m. and 7 p.m. on a certain road in respect of which there were notices exhibited prohibiting the waiting of any vehicle on any such road, contrary to art. 1 of an order made by the Hereford Corporation on Dec. 11, 1950, under s. 21 of the Town Police Clauses Act, 1847. The corporation inserted a paragraph in the order providing: "Any person acting in contravention of this order shall be guilty of an offence . . ." It was established that the appellant's lorry had stopped for the legitimate purpose of delivering goods, and, owing to some mechanical defect, had failed to re-start, with the result that it remained in the street. The justices convicted the appellant, who appealed.

C. G. Armstrong Cowan for the appellant.

Maurice Ahern for the respondent.

LORD GODDARD, C.J.: A great variety of points seem to have been taken before the justices by the advocate for the appellant, but the court has discovered a point which he did not take and which, in our opinion, entirely invalidates the conviction. The order made by the corporation was made under s. 21 of the Town Police Clauses Act, 1847, which gives power to a local authority to make orders preventing any obstruction of the streets in the neighbourhood of theatres and other places of public resort. I understand from the Case that the order in question here referred to the streets in the neighbourhood of a market. The section continues:

> "and every wilful breach of any such order shall be deemed a separate offence against this Act, and every person committing any such offence shall be liable to a penalty not exceeding 40s."

In making this order the corporation inserted a paragraph providing:

> "Any person acting in contravention or committing any wilful breach of this order shall be guilty of an offence against the said Act and shall be liable to a penalty not exceeding 40s."

It is unnecessary in such an order, except, I suppose, to call the attention of the public to it, that any reference should be made to penalties, because the penalties are imposed, not by the order, but by the statute under which the order was made. The statute does not give the corporation power to provide that penalties shall be imposed for a breach of the order. The statute has provided that, if an order is made, there shall be a penalty if the offence created by the statute has been committed. The statute creates the offence not merely of causing or permitting obstruction, but of wilfully doing it. If the corporation think fit to keep in their order any reference to the offence and a penalty, it would be desirable for them to state it accurately. What they have stated is about as inaccurate as anything could be: "Any person acting in contravention or committing any wilful breach of this order shall be guilty of an offence." It is a contradiction in terms, because the offence is wilful breach. Contravention is breach, so the order reads: "Any person acting in breach or in wilful breach of this order shall be guilty of an offence." The difficulty in their way is that the statute provides that it is only a person who acts in wilful breach of the order who is to be guilty of an offence. I think there are some merits in this case, for, if the justices had had a proper information before them which charged the offence, namely, that the appellant "wilfully did cause a certain vehicle . . ." they might have come to a different decision. The facts show that the lorry, which had stopped for the purpose of delivering goods, which was a legitimate purpose, owing to some mechanical trouble would not start again. The justices would, therefore, have had to come to a decision on the question whether there was a wilful obstruction which would amount to a wilful breach of the order. I suppose that very likely that would depend on whether the appellant did all he could to get the lorry to move, but I am only dealing with the Case on the footing that the information did not disclose an offence. The word "wilfully" being left out, the information was bad and the conviction was bad. Therefore, the appeal must be allowed.

SLADE, J.: I agree.

DEVLIN, J.: I also agree.

Appeal allowed.

Solicitors: *W. P. Gillham*, agent for *L. J. Slade*, Newent (for the appellant); *Sharpe, Pritchards & Co.*, agents for *T. B. Feltham*, town clerk, Hereford (for the respondent). T.R.F.B.

KING'S BENCH DIVISION

(Lord Goddard, C.J., Slade and Devlin, JJ.)

Oct. 24, 25, 1951

BENJAMIN *v.* COOPER

Street Traffic—Hackney carriage—Metropolitan police district—Plying for hire—"Elsewhere than at some standing or place appointed"—Private place—London Hackney Carriages Act, 1843 (*6 and 7 Vict., c.* 86), *s.* 33—*London Passenger Transport Act*, 1934 (*24 and 25 Geo.* 5, *c.* xcvi), *s.* 112.

The driver of a motor hackney carriage was found plying for hire on the unenclosed forecourt of an underground railway station within the metropolitan police area, the forecourt being the private property of the London Transport Executive. No lawful authority had appointed any part of the forecourt as a standing or place where hackney carriages might ply for hire. On appeal by the driver against a conviction of having plied for hire with a hackney carriage in the metropolitan police district "elsewhere than at some standing or place appointed for the purpose," contrary to s. 33 of the Hackney Carriages Act, 1843,

Held, that the provisions of s. 112 of the London Passenger Transport Act, 1934, that the precincts of a London Transport station shall be deemed to be a street or place, applied only to s. 35 of the London Hackney Carriage Act, 1831 (which dealt with refusal to accept fares), and not to s. 33 of the Act of 1843, which dealt with obstruction, and that, as s. 33 did not prohibit plying for hire in a private place, the driver was not guilty of the offence charged, and the conviction must be quashed.

Skinner v. *Usher* (1872) (36 J.P. 693), followed.

Case Stated by Middlesex justices.

At a court of summary jurisdiction sitting at Enfield on June 18, 1951, an information was preferred by the respondent, a police constable, charging the appellant with having plied for hire with a motor hackney carriage on May 23, 1951, at Bramley Road, Southgate, London, elsewhere than at some standing or place appointed for the purpose, contrary to the London Hackney Carriages Act, 1843, s. 33. The appellant contended that s. 33 of the Act of 1843 applied only to plying for hire in a public street or place and that there was no evidence that he had plied for hire at such public street or place. The justices convicted the appellant, who appealed.

Borders for the appellant.

E. H. P. Wrightson for the respondent.

LORD GODDARD, C.J.: This is a Case stated by justices for the county of Middlesex before whom the appellant was charged

> "for that he . . . at Southgate in the county of Middlesex did ply for hire with a motor hackney carriage elsewhere than at some standing or place appointed for the purpose, contrary to s. 33 of the London Hackney Carriages Act, 1843."

The appellant is a taxicab driver holding a licence to ply for hire with a hackney carriage. The place in question was Oakwood Underground Station. In front of the entrance to the station, and between it and the main street, is a piece of unenclosed ground, which is the private property of the London Transport Executive, and forms the forecourt of the said station. This forecourt is open to the street and is frequented by the public, but is not subject to any right of passage by them. On May 23, 1951, the appellant was the driver of a motor hackney carriage, which was stationary on this forecourt facing the entrance to the station. He was seated in the cab and the justices have found that he was plying for hire with it. No part of the forecourt has ever been

Printed by R. J. Acford Ltd., Industrial Estate, Chichester, Sussex. Saturday, December 22, 1951

Christmas Appeals

The Charitable Institutions on this and succeeding pages are recommended for your earnest consideration.

YOU will derive greater benefit from your holiday if you have the conviction that some of your less fortunate fellow creatures are benefiting also by your thought.

HELP ANIMALS

BY HELPING

Our Dumb Friends League

GROSVENOR GARDENS HOUSE
VICTORIA, LONDON, S.W.1

266,206

Horses, Dogs, Cats, Birds, etc., helped by the League last year

Donations & Legacies most gratefully acknowledged

M 133

A request for bequests and donations is made by The Marine Society

the long-established charity (founded in 1756) of which H.M. THE KING is Patron

Nearly 300 boys were helped last year to go to sea either in the Royal or Merchant Navy by grants towards their pre-sea training, sea outfit of clothing or the premium which some Shipping Companies require when a boy is accepted as an apprentice or cadet.

Please send a donation to the Secretary, or remember in your Will

THE MARINE SOCIETY
Clark's Place, Bishopsgate, London, E.C.2

ALONE ON CHRISTMAS DAY!
THE WEST LONDON MISSION
Appeals at this time for

The very lonely people who live in one room

The old folk—that we may provide them with comforts

The little children in our care

Our big Family Party on Christmas Day for the friendless

WILL YOU MAKE IT POSSIBLE FOR US TO CARRY OUT OUR PLANS THIS CHRISTMASTIME—WE DEPEND ON YOUR HELP

PLEASE SEND YOUR GIFT—WE WILL DO THE REST.

REV. DR. DONALD O. SOPER,
West London Mission · Kingsway Hall
KINGSWAY, LONDON, W.C.2

JUSTICE?

THERE can never be complete justice for man; justice for animals is in its infancy—an emerging idea, not an accomplished fact.

Last year, in British laboratories, there were about 1,780,000 experiments on living animals, many of which caused great pain and suffering.

We ask you to write to us:—

British Union for the Abolition of Vivisection
(B.U.A.V.)

47, WHITEHALL, LONDON, S.W.1

for information. Study it, think the matter over, and then

Let Justice Be Done!

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

VOL. CXV. No. 51.
Pages 803-816

LONDON : SATURDAY, DECEMBER 22, 1951

Offices: Little London, Chichester, Sussex.

[Registered at the General Post Office as a Newspaper]

Price 2s. 3d. (including Reports)
Price 1s. 3d. (without Reports)

NOTES of the WEEK

Approved School and Contribution Orders

Reporting a meeting of the Magistrates' Association, the *Manchester Guardian* contains the following: "Alderman R. G. Robinson, of Cardiff, President of the Association of Managers of Approved Schools, said: 'I do not see why it should be possible for you to get your children brought up on the cheap if they are bad.' He wished there were some method by which parents paid for the upkeep of their boys or girls when they were sent to approved schools.

"If they get into trouble it is the best thing that could happen to you if you are a parent who only thinks of the financial side," he said, "While parents who are poor cannot pay very much they should pay something as a gesture, and it certainly should not be cheaper for them if their children get into trouble."

The speaker was evidently referring to the practice rather than to the law. Ample provision is made by statute for the making and enforcement of contribution orders against parents of children sent to approved schools or committed to the care of fit persons. As to the amount of such contributions, s. 25 of the Children Act, 1948, abolished the former limitation, and the amount rests within the discretion of the court.

It certainly used to be said that some local authorities asked for too small orders, and if the court exceeded their suggested sum refrained from enforcing the order. That seems wrong in principle, and now that wages are generally adequate and often high, there is no reason why parents should not pay substantial sums towards the maintenance of children of whose care they have been relieved, instead of leaving others to keep them. We have heard of an order of £2 10*s.* a week which must be exceptional but probably not excessive.

Borough Quarter Sessions and Appeals

Our Note of the Week at p. 739, *ante*, dealing with appeals against sentence to a court of borough quarter sessions, was referred to in a leading article in the Bradford *Telegraph and Argus* of December 1. Under the title "The One-Man Tribunal" the article questions the desirability of such a court as an appellate tribunal to revise sentences pointing out that an appeal to the Court of Criminal Appeal is never heard by fewer than three judges.

The same journal in its issue of November 30 had reported an address given by Mr. Frank Owens, the learned clerk to the Bradford justices, in which he expressed very definite views on this subject.

Mr. Owens pointed out that appeals to quarter sessions could involve matters of law and of fact, and it was about questions of fact that he was a little perturbed. It seemed a little ironical to him that, after a number of magistrates had arrived at a decision, that decision could be upset by a Recorder on appeal upon the same facts. If a defendant having elected to be tried at quarter sessions exercises that right, it is a jury which finds him guilty or not guilty, whereas if he is tried summarily and then appeals, the Recorder sitting alone determines the matter. Mr. Owens went on: "I think the justices should be the sole and final judges of fact, and if those findings of fact are to be disturbed by quarter sessions, then they should be disturbed by a jury. I feel that on findings of fact the justices' decision should be final, and appeals on questions of law and fact should go to the Divisional Court, and that quarter sessions should not have jurisdiction."

That is an interesting suggestion, which goes further than critics of the present system usually suggest. An appeal to quarter sessions is a rehearing, and most of the advocates of change in the system would be content if the appeal were to several justices presided over by a qualified and experienced chairman. Whether it is necessary to go further and say that only juries should deal with appeals upon questions of fact we rather doubt. Might not justices sit with a recorder? Moreover, we think there should be some right of appeal on matters of fact, for although appellate tribunals hesitate to disturb the findings of the tribunal which has been entrusted with the duty of finding the facts, that is because the appellate tribunal does not usually see and hear the witnesses, while the fact finding tribunal does. Upon an appeal to quarter sessions, however, the appellate tribunal sees and hears the witnesses, including sometimes additional witnesses not called in the magistrates' courts.

Summary trial for Housebreaking?

Mr. Owens also touched upon another matter about which justices and others have from time to time made suggestions. He asked why it should be necessary to send a simple case of housebreaking, possibly involving the theft of little or no property to quarter sessions for trial, when, if the prosecution agreed and the defendant consented, magistrates could deal summarily with charges of larceny or false pretences involving property worth thousands of pounds. If the defendant were convicted

and his record proved to be bad he could always be sent to quarter sessions. For economic and other reasons he thought the jurisdiction of justices should be extended.

This view is widely held, and not infrequently voiced. Apart from questions of property value, it is no doubt true that to break into premises and steal is a graver offence than to steal property which is quite unprotected, just as certain forms of larceny such as stealing in a dwelling-house or from ships in dock or from the person, have been and still are regarded as more serious than simple larceny. Many cases of housebreaking or shopbreaking however, involve breaking and entering in only the legal sense, and many of these would be fit cases for summary trial. Against that, it must be recognized that serious cases of breaking and entering ought to go to the higher courts, and it would be necessary for justices to resist any temptation to deal with these upon the sole ground of saving trouble and expense.

It has even been suggested that some of the offences included in sch. 2 to the Criminal Justice Act, 1925, are not altogether suitable for summary trial, and that if anything is done about the matter the schedule should be revised not only by the addition of some offences but also by the omission of others.

The London Police Court Mission

In a Welfare State so much is undertaken by public authorities and so many services are available which are supported by public funds that it is not unreasonable for people who have been in the habit of subscribing generously to societies and institutions supported by voluntary contributions, to ask a question which is the title of an article introducing the annual report of the London Police Court Mission, namely, "Why Charities?"

The answers suggested in the report are "first, to give inspiration to public authorities on social welfare; second, to carry out experiments and research; third, to provide services not already supplied by public authorities; and fourth, to preserve the spirit of giving personal services as well as money to help the less fortunate members of the community."

The report of the Mission, dealing with the various institutions for which it is responsible, amply justifies the plea for continued support. Financial stringency prevents the Home Office from putting into effect some of the schemes with which it sympathizes and which it would no doubt wish to sponsor. If voluntary effort can fill the gap so much the better. For instance, there has been considerable public disquiet about persistent absconders from approved schools, and the Mission wants to deal with the problem in a practical way by experimenting with a "closed" house at the Cotswold School, from which they cannot escape, but where they will be studied individually. Doubtless this will involve expenditure on additional staff and perhaps constructional alterations or additions and it will be for the Mission to find the money.

It should never be forgotten that some seventy-five years ago it was the Church of England Temperance Society, the parent of the Police Court Mission which, on the suggestion of Frederick Rainer, whose act is commemorated in the name Rainer House, the hostel for probation officer trainees, appointed the first police court missionaries. These began to do work which was to expand and develop into the probation system, and most of the early probation officers had been court missionaries. Thus, as in many other fields, voluntary effort showed the way, and when in the fullness of time public authority took over the probation service, it took over a going concern, which is still going well. That did not mean there was nothing left for voluntary societies, and it would be a sad day if such an organization as the London Police Court Mission ceased its activities. It works in close and harmonious co-operation with the Home Office and, as this report shows, it is rendering signal service in a variety of ways.

Public Houses Private

Our note at p. 597, *ante*, on the subject of public houses in New Towns was written before the change of Government, but, although it had been crowded out from publication until after the election we saw no need to revise what we had said, since it bore clear internal evidence that the governmental decisions we mentioned were those of the late Government, which up to the date of publication had not been reversed. Almost immediately afterwards, however, came the announcement of a change of policy by the new Government, who have resolved that in the New Towns as elsewhere, except in the existing state management districts, the keeping of public houses and retailing of refreshments therein is to be left entirely to private enterprise. Necessary legislation is to be introduced for the purpose. On the merits we see no need to modify what we have said. It is difficult for people who do not live in Carlisle, or have occasion often to visit that city, to form an opinion on state management in practice. We still think there would have been something, as we suggested previously, to have been said for an experiment in the New Towns by letting the two types of public house exist together. We suspect that the ordinary member of the public, when minded to go to licensed premises, will care little whether they are under state management or are managed on behalf of a brewery company or other private owner, so long as he can get the kind of refreshment he desires, with the welcome and the courtesy to which he is entitled. If any Government, in applying a system of state management, strictly tied its licensed houses to governmental breweries, then the public would certainly not be satisfied—unless indeed the governmental beer was so superlatively excellent that it washed away all preference for other brands. The essence of the matter is reasonable choice, so far as the customer's pocket will extend. There is no reason why the host should be worse mannered under state management than under a brewery company and, therefore, given reasonable choice of refreshment, his employer's identity should matter nothing to his guests. It would be interesting to find out whether this is so, but, unless further experiments are allowed, this matter (which interests many people) must remain a matter of opinion and conjecture.

Decorum and Decency

In speaking at p. 776, *ante*, of the conviction of the Yorkshire Electricity Board, we remarked that dignity and decency were fitting, in the offices of every public body. We do not hold it against the late Minister of Works, as did some widely circulated organs of the press, that, when part of the building adjacent to New Scotland Yard was being got ready for his still-born Ministry of Materials, there was the differentiation in furniture which we doubt not obtains in the head office of his firm at Ipswich, and is customary between different ranks of officers even in Whitehall. Shareholders in a company do not expect the managing director to sit in the same sort of chair and at the same sort of table as are given to an office boy or even to a ledger clerk, and we do not believe that efficient service to the public (which is all that matters) would be fostered by a Stoic or Franciscan egalitarianism among persons paid by ratepayers and taxpayers, at least until such time as it is applied in commercial and in ordinary life. While at the moment we think the Government will do well to postpone providing the special and expensive doors, said to have been ordered for the main entrance of the new offices on the site of Whitehall Palace, for the same reason as they have given up the use of individual

motor cars, we should not in principle begrudge the money. Progress has gone far towards wiping out the craftsman ; fate, folly, and their agent the tax collector, have killed private patronage of the fine arts, and the scope for maintenance of these under ecclesiastical patronage is much reduced. There remain " big business," both socialized and " free," the State, and local government. But there is no need for the twentieth century to go down to posterity as a boorish period, merely because nobody except " the public " can now afford to pay for what is not utilitarian. £26,000 for the doorway of a building looks a lot of money when the figure is printed in a gossip column and weighed against the number of working class houses it would build ; this is why we said we would postpone its spending for the moment, but when seen in perspective these doors will have cost infinitely less than the Lion Gateway of Mycenae, or the Baptistery Doors at Florence, to name but two of many predecessors. We refuse to see our country as so poor in spirit that she will leave nothing to compare with what was done in a single city of the Renaissance, or of the Peloponnese three milleniums before. Even the Victorians who built the Home Office and the Gothic town halls, gloomy and grimy as these may seem to the modern eye, were doing right by leaving to their children a legacy of architecture and craftsmanship as they understood it, just as did the Athenians when they perpetuated the ideas of Pheidias, and the London Passenger Transport Board in perpetrating Epstein.

Therefore we do not begrudge the L.C.C. its terrace, or B.O.A.C. the clock tower on its London terminus, or the new Whitehall offices their ceremonial doorway (this after some delay), any more than we grudge the Doge's Palace or the Cloth Hall to their respective cities—and we take leave to be confident that twentieth century England can do much better if it tries than it has done so far. What does, however, seem to us to call for protest with all emphasis is failure of the Government, in particular the Ministry of Works, to keep in a state of decorum and decency some of its existing buildings. Local government representatives visiting the Home Office on deputations have been disgusted to find the courtyard, on which open the windows of the grand stairway and the corridor giving access to the Home Secretary's room, half filled with mean shanties and used otherwise as a dump for coal, while the private street, giving access to the office of the Secretary of State for Air and to the German Division of the Foreign Office, is throughout the day littered with coke and cinders escaping from piles of broken, dirty, dustbins, which would not be tolerated in the purlieus of the office of any local government authority or, we imagine, in any government office outside Great Britain. The excuse is, we suppose, that the parliamentary vote for the Ministry of Works is insufficient to pay workmen to hide these battered horrors indoors and to sweep the pavements. It is a poor excuse for endemic sordidness in official premises, at the very centre of the British Commonwealth.

WHEN DOES THE RIGHT OF APPEAL ARISE

In a Note of the Week at 114 J.P.N. 258, attention was drawn to the doubt which s. 36 of the Criminal Justice Act leaves as to the time at which the right of appeal arises, and, with some regret the view was put forward that where a person is convicted by a summary court, and remanded for inquiries, the right of appeal arises only when the court announces its decision at the end of the remand period. This view has been adopted by the County of London Sessions but, in the opinion of the writer, it would be a pity if this were generally accepted without further question, for although the arguments in favour of this view are perhaps stronger than those which tell against it, there is at least a case for the opposite view.

Where a defendant has pleaded not guilty, but is found guilty by the court, the Criminal Justice Act, 1948, would seem at first sight to give him an unequivocal right of appeal against this conviction, since it is provided in s. 36 that " A person convicted by a court of summary jurisdiction shall have a right of appeal . . . [where he pleaded not guilty] to a court of quarter sessions in the manner provided by the Summary Jurisdiction Acts." Since the decision in *R.* v. *Sheridan* (1936) 100 J.P. 319, it is beyond dispute that a conviction without a sentence is still a conviction, and accordingly it would seem to follow that a right of appeal would arise as soon as the court announces its decision to convict. The difficulty arises from the wording of s. 36 (3) of the Criminal Justice Act, 1948, coupled with the provisions of s. 31 (1) of the Summary Jurisdiction Act, 1879. This latter section provides that " the appellant shall, within fourteen days after the day on which the decision of the court of summary jurisdiction was given, give . . . notice in writing of his appeal " ; and the Criminal Justice Act provides that " Where a court of summary jurisdiction has adjourned a case after conviction, the day on which the court sentences or otherwise deals with the offender shall, for the purposes of s. 31 of the Summary Jurisdiction Act, 1879, be deemed to be the day on which the decision of the court is given." Accordingly despite the fact that the court announces its decision to convict the defendant—thereby giving him a right of appeal—if the defendant is remanded for inquiries, then the decision of the court is for the purpose of an appeal deemed to be given only at the end of the remand period.

Against this seemingly impregnable position there are perhaps two points, one of a specific and one of a more general nature, which may be urged. First, if it can be shown that there was another good reason for introducing s. 36 (3) other than that of limiting the right of appeal, might it not be argued that the intention of the Legislature was to deal with this other aspect of the matter, and that, possibly, the limiting effect of the subsection was overlooked. In the writer's view it may reasonably be suggested that the subsection was introduced to safeguard the right of appeal by removing any difficulties which might otherwise have arisen since (*a*) notice of appeal is to be given within fourteen days of the decision of the court ; (*b*) a finding of guilt or a plea of guilty is a conviction ; and (*c*) the Criminal Justice Act was giving the courts the power to order a period of remand up to three weeks. In the absence of any such provision the point might well have been taken that a notice given at the expiry of a remand of three weeks was out of time. Since the whole tenor of the Criminal Justice Act, as far as the matter of appeal is concerned, is to enlarge the right and simplify the procedure, it may be suggested that it is in keeping with the whole tenor of the Act to interpret this subsection in this way. There remains the more general point, which was excellently expressed in the Note referred to *supra*, that it seems hard and in a sense unjust, that a person who has strongly contested a case and is aggrieved by being convicted and who wishes to exercise his right to appeal against that conviction must wait, possibly in custody, for some period or periods, and be the subject of various inquiries, sometimes involving medical examination, without being able to exercise that right.

In a matter such as this, which affects the liberty of the subject, it may be hoped that it will not be long before the High Court is asked to decide this matter.

COLOURING THE COUNCIL AND COURT NEWS

By A NEWSPAPER JOURNALIST

From time to time, members of local councils and magistrates' courts inveigh against what has come to be known as the "colouring of news" in the press, thus confirming in the parochial sphere what politicians and preachers have sometimes condemned in the national.

The tendency to eschew objectivity in reporting the news of local government bodies and courts of law is today perceptible not only in the popular national newspapers. It has spread to the provincial morning and evening papers, and even to the weekly town or country organs which once provided a literal, verbatim record of all the public happenings and spoken words within their domain.

The purpose of this article is not to defend or attack modern "colouration," but to explain its background and some of the technicalities involved.

To begin with, it must be made clear that the reporter who is seen assiduously at work with notebook and pen at the press table in the civil chamber or magistrates' court is himself rarely guilty of colouring the news. As a rule, his function is simply to provide raw material, to which the brush is later applied.

The artist upon whom devolves the task of colouring the news is not the reporter, but the sub-editor. While the reporter works outside the office, garnering the local harvest of news, the sub-editor works entirely inside and has little if any direct contact with the sources of news.

The technical power of the sub-editor, and therefore his influence on the reader, has grown enormously of late years although he is no more than a rank-and-file member of the newspaper staff and holds no executive position. Up till the end of last century, he was hardly known to the newspaper world of Britain, though he had already made his appearance in the United States, where he had begun to revolutionize popular journalism. Three quarters of a century ago, newspaper copy was still being handed direct to the printer by the reporter, and there was no intermediary unless the editor chose to read copy in handwriting before seeing it in proof. To this day, this is still the routine in small weekly newspaper offices.

Gradually, one or two sub-editors were attached to each of the larger daily newspapers. But, with the advent of the Northcliffe era in journalism, a radical transformation took place. The sub-editor (or copy reader as he is called in United States journalism) assumed paramount importance in the staff hierarchy.

He became, and now continues to be, invested with the duty of checking copy for errors of fact or taste, for correcting lapses in English, for co-ordinating and simplifying style, for collating news items of cognate interest, for construing editorial policy in the presentation of news matter, and—what especially concerns us here—for making reports palatable, readable, and entertaining.

To make news entertaining, the sub-editor composes headlines (either single or in "decks"), interposes "cross-heads" to break up the text, shortens paragraphs so that they will not fatigue the reader's eye, deletes copy which may be repetitive or "uninteresting," re-arranges the reporter's news-points, re-writes material wherever necessary, and rounds off the whole with pithy introductory paragraphs.

One of the chief distinctions between the old style of reporting a court case or a council discussion and the modern method lies in the treatment of chronological sequence. Formerly, the reporter would take care to record events and speech in the order in which they occurred. Thus, in reporting a magistrates' court, he would begin by stating the composition of the bench and any prefatory remarks by the chairman, then go on with the first case, the prosecution's opening speech, the witnesses' evidence in the order it was given, counsels' summing up, the bench's comments, and the verdict. Local government meetings would be similarly treated.

Today, this literal recording of sequence is almost unkown, except in a few old-fashioned local newspapers. Instead, the sub-editor has the duty of what is technically called "bringing the story to the top." That is to say, he seizes on the salient points in the report, combines them, and writes them up in crisp style to serve as the introduction and "lead-in" to the whole.

It is in the selection of what is considered salient and important that the journalist most frequently comes into conflict with local government and legal personnel. For their assessment of importance often differs profoundly from his.

Undeniably, headlines and opening paragraphs condition the understanding and reaction of the reader. They do, in fact, tell the average reader what to think. It will thus be recognized that the power of the sub-editor, who is daily creating headlines and composing "lead-ins," is substantial.

At this point it must be stressed that the colouring of news by the use of this selective process is not necessarily done in an *ex parte* spirit, at least on provincial and local newspapers. Rather it is pursued for what is called "reader interest." If, for example, there is a complicated court dispute over a charge of drunkenness while in charge of a motor car, and the defendant happens to be a clergyman, then the headlines and "intro" would concentrate on the personal "angle," fortuitous though it might be. Thus: "Clergyman on Drink Charge."

The truth has been told, but distorted. That distortion is not deliberate or malicious, but scandal-mongering and gossip are popular institutions to which even the best newspapers must bow if they are to survive.

This showmanship technique of the sub-editor is not something which he dons unwillingly. He takes pleasure and pride in exercising it. Indeed, the charge that "journalists prostitute their talents" in emphasizing the wrong things is nonsense. Because of his skill, the sub-editor is invariably paid more than a reporter, and the best reporters expect to be promoted to the sub-editor's desk.

Hardly a local weekly newspaper of any importance is today without one or more sub-editors. Their employment has been made all the more necessary by the shortage of newsprint and consequent contraction of space available for news. A sub-editor must be quick to weigh what he may safely leave out. His mind must be divided, at times, between what he considers to be in the public interest and what may be, journalistically, "a good story"—that is, an entertaining or scandalous piece of news, the printing of which would add nothing to the public weal; but on the whole local newspaper journalists do have a sufficiently high appreciation of the needs of popular government to give precedence to the task of keeping the public properly informed.

It is normally the policy of non-national newspapers, when reporting local government meetings and activities, to give equal weight to the expressed opinions of all parties or groupings.

This is so even where a newspaper feels called upon to " run a campaign " on either a relevant or a manufactured issue. But it does sometimes happen that a reporter or sub-editor, in an anxiety to be faithful to the newspaper's politics, may go beyond his brief and produce biased copy. In such cases, complaint by local government officials or party leaders would usually secure redress, and at least make it likely that the error of bias would not be repeated.

Evidence given at the Royal Commission on the Press showed that a high proportion of middle-aged and younger journalists on daily and weekly newspapers have no more than an elementary school education. Many started as " copy boys " or odd-job boys. Of recent years, nevertheless, most of the new entrants to newspaper journalism have been of higher-grade education, up to university standard.

It should not be imagined, however, that the spread of scholarship in newspaper officers will bring about a more objective and less selective treatment of news. Present-day standards of reporting and sub-editing are set by twentieth-century traditions in journalism, and any modification must be imposed upon them from outside.

For this reason, a special responsibility is laid upon all connected with law and local government to be vigilant lest the trade of " colouring the news " should deteriorate into falsification and the dragging-down of truth. Newspaper proprietors are as much susceptible to informed criticism as they are alive to the devices whereby newspaper sales are increased. Up till now, the colouring of news in the local press has been comparatively harmless and without viciousness. It amuses the reader and often turns obscurities into subjects of popular interest. *Per se*, therefore, it cannot be condemned. But it is a process which all too easily could be transformed into something harmful to the English method of local government by bodies elected on the widest franchise—by an electorate, that is to say, which is exceedingly susceptible to half truths and insinuation.

THE SAMPLING OF FOOD

By R. A. ROBINSON, O.B.E., *Barrister-at-Law*

Twenty or thirty years ago those who administered the Sale of Food and Drugs Acts in counties or boroughs were often at a loss to know what foods to sample for chemical analysis. There were no statutory standards of composition for articles of food, no labelling orders, and hardly any regulations affecting the composition of food. So when proceedings were set on foot in respect of the sale of food not of the nature, substance or quality demanded, the prosecuting authority often had to face the possibility that the ratepayers of the area might have to foot a heavy bill for the fees of opposing counsel and expert witnesses employed to discuss whether the standard adopted by the public analyst was or was not the right criterion by which to decide the issue. Moreover, in the Acts in force between 1875 and 1939, a label indicating that the food sold was mixed was in many circumstances a sufficient defence.

Now the problem of sampling has altered enormously. Milk, fats, and many other commodities are subjected to close control by the Ministry of Food ; and chemical analysis of many of these controlled foods serves comparatively little purpose. (Bacteriological examination of milk is quite another matter.) The Labelling of Food Order and the numerous food standards orders are very well observed. An ever-increasing proportion of the trade in food distribution is done in multiple shops, often controlled by huge companies which employ analysts and inspectors to ensure that no infringement takes place. The result is that although the old difficulty arising from the absence of standards and labelling requirements has largely disappeared, the task of the sampling officers in selecting foods to be analysed must, I think, be as baffling as it was formerly—although there is now much scope for useful activity on the part of administrators of the Act, apart from operations requiring to be supported by a public analyst's evidence. Meat, fish, fruit and vegetables not of the *nature* demanded, and wine, meat and eggs not of the *quality* demanded are examples of the fact that while the *substance* of the foods may be such as to defy analysis in the chemical laboratory, the provisions of the Act may nevertheless be brought into effective and salutary operation without the public analyst coming into the picture.

Nevertheless, it would, in my view, be a mistake to assume that there is no longer scope for intelligent sampling related to the sale of food of prejudicial composition. The city analyst of Birmingham has recently demonstrated that capsules and various preparations alleged to contain vitamins are often grossly deficient in vitamins. And, now that standards are fixed for cream, ice cream, salad cream, jam, potted meat and the like, the local authority knows just where it stands when an adverse certificate on these foods comes in from the analyst. Moreover, the changes made by ss. 4 and 5 of the Act of 1938 have greatly simplified the task of the prosecutor when attempts are made to rely on labels as affording a defence to a charge of selling an article not of the nature, substance or quality demanded.

INEFFECTIVE LABELS

I doubt whether many sampling officers and their administrative chiefs adequately appreciate how great a change has been made in the law. The labelling defence dealt with in ss. 4 and 5 is only available when some substance has been added to a food or when some constituent has been abstracted from it. When an entirely different article from that demanded is sold—whether differing in nature or in substance or in quality—a seller who relies on a label alone is on perilous ground. The best example that I can think of to illustrate my meaning is " Non-brewed condiment." If a purchaser asks a shopkeeper for vinegar and is supplied with a bottle labelled " Non-brewed condiment " (with the necessary printed statement about acetic acid), the label in my view is of no value whatever as a defence. The purchaser in such circumstances is undoubtedly prejudiced, in the eyes of the law, unless it has been clearly explained to him that what is in the bottle is not vinegar. The words " non-brewed condiment " convey no meaning to the mind of the average purchaser, and she is the person who matters. The phrase might just as well mean mustard or salt or any other condiment which is not brewed.

The malt vinegar manufacturers rendered a fine piece of service to the public—as well as to themselves—when they succeeded in establishing in 1950 in the High Court case of *Kat* v. *Diment* (1950) 114 J.P. 472, that a solution of acetic acid is not truly described as vinegar, even if that word is qualified by such an adjective as " non-brewed." When, in consequence of the decision just quoted, " non-brewed vinegar " disappeared from thousands of fish shops, greengrocers' shops and small general shops, a trade association announced that in future

dilute acetic acid would be sold as "non-brewed condiment." I thought at the time that insuperable difficulty would be experienced in persuading retailers to buy stocks. It is therefore with surprise that I have recently heard, from old associates engaged in administering the Food and Drugs Act, that some retailers are now supplying this oddly-named product to customers demanding vinegar. It seems to me that sampling officers should be alert to nip this evil in the bud and to carry on the job of protecting the public which was begun by the Vinegar Brewers' Federation.

It has been proved beyond doubt over and over again that in flavour, aroma, and food value, genuine vinegar produced by successive processes of alcoholic and acetous fermentation is vastly superior to the crude substitute which for so many years masqueraded under the name of vinegar, table vinegar, and (later) non-brewed vinegar. When a purchaser asks for vinegar and receives acetic acid solution labelled "non-brewed condiment" the article supplied is different in substance and in quality (and probably also in nature) from that demanded; and the label now being used provides the vendor with no answer, in my opinion, to a prosecution under s. 3.

WEEKLY NOTES OF CASES

CHANCERY DIVISION
(Before Vaisey, J.)
November 12, 13, 28, 1951
ATTORNEY-GENERAL *v.* LEEDS CORPORATION

Water—Supply for non-domestic purpose—Car washing—Automatic levy of additional rate on all registered car owners in area—Validity.

ACTION by the Attorney-General, suing on the relation of Automobile Proprietory, Ltd., for an injunction to restrain the defendants, Leeds Corporation, from levying an additional water rate of 3*s.* a quarter on every person registered in the area served by the corporation with water as the owner of a motor car or tri-car for which an excise licence was in force, whether or not such person had made a request for a supply of water for the non-domestic purpose of washing the car.

The corporation were constituted the undertakers for the supply of water for the city and county of Leeds by the Leeds Corporation (Consolidation) Act, 1905, which, by s. 5, incorporated the Waterworks Clauses Act, 1847 (with certain immaterial exceptions) and the whole of the Waterworks Clauses Act, 1863. By s. 21 of the special Act, in addition to the purposes set out in s. 12 of the Waterworks Clauses Act, 1863, a supply of water for domestic purposes was not to include a supply of water for washing any carriages, and by s. 24 the corporation were empowered to supply water for other than domestic purposes on such terms and conditions as they might think fit. Two resolutions passed by the corporation in 1926 and 1935 respectively provided that the charge for water for washing motor cars and tri-cars was to be 3*s.* for any quarter or less period for which an excise licence was in force in respect of the car. The corporation proceeded to levy a water charge in addition to that payable for domestic purposes on every person registered in the area as being the possessor of a motor car or tri-car in respect of which a current Road Fund licence was in force, and this notwithstanding that the person charged had made no request for a supply of water for non-domestic purposes. In each quarter a demand note was sent to each registered owner demanding payment in respect of that quarter of the total water charges claimed from that person, whether for domestic or for non-domestic purposes, and it was contended that such an automatic levy for non-domestic purposes was in excess of the statutory powers of the corporation.

Held: although this procedure cast on car owners the onus of disproving non-domestic use of water and might thereby result in their paying rather than challenging the small additional charge, nevertheless the corporation had not exceeded their statutory powers.

Counsel: *Sir Andrew Clark, K.C.*, and *Skelhorn* for the Attorney-General; *Upjohn, K.C.*, and *Denys B. Buckley* for the corporation.

Solicitors: *Clifford-Turner & Co.* for the Attorney-General; *Sharpe, Pritchard & Co.*, for Mr. O. A. Radley, town clerk, Leeds, for the defendants. R.D.H.O.

REVIEWS

Butterworths Commercial Controls. Edited by Butterworths Legal Editorial Staff. In four volumes. London: Butterworth & Co. (Publishers) Ltd. Price £9 10s. net. Fortnightly Service £2 15s. per quarter.

This work is confined to legislation of immediate interest to the commercial community, and is described by the publishers as a daughter work of their *Emergency Legislation Service*, than which it could have no better introduction to a world still harassed by emergency conditions and emergency enactments. It may also be regarded as a companion work to *Halsbury's Statutory Instruments*, which we had the pleasure recently of commending as a notable step in legal publishing. The scope of the two works is different, and complementary. *Halsbury's Statutory Instruments* is not confined to any one topic or class of topics, but is confined to subordinate legislation. Although the commercial controls which are the subject of the present work are primarily those not dealt with directly by Act of Parliament, Acts of Parliament which directly bear upon the subject are not excluded; in fact, one advantage over some other publications is that an Act will here be found in the same volume as its subordinate legislation, the text being printed with annotations or, where this is more appropriate, being explained in preliminary notes. Thus, while the emphasis is upon Statutory Rules and Orders and Statutory Instruments, the practitioner will be saved the delay involved by referring back from these to statutes printed elsewhere. We have just spoken, incidentally, of "volumes." The main part of the publication at the outset comprises, and the work is intended in future to comprise, a collection of legal provisions bound into normal volumes. Experiments have in recent years been made by Messrs. Butterworth and other publishers, with law books wholly or mainly compiled upon the loose leaf system. Of these, their *Emergency Legislation Service* was the pioneer and perhaps the largest in bulk. The system has been followed by other firms, in works dealing not with emergency law alone, but with enactments intended to be permanent; it is now stated that representations have been received from users of works compiled upon this system, to the effect that it is more convenient to have the body of the law in bound volumes. This is what we should ourselves have suggested, as the result of our practical experience. Given time and inclination on the part of the principal, to keep his own loose leaf binders in order, or given completely reliable staff, completeness and accuracy may not suffer, but even so there is often some deterioration of pages at the binding edge, in a loose leaf compilation regularly handled, and (in the world as it is) there are other dangers attendant on a completely loose leaf system—notably that any mistake or temporary aberration (if, for example, the clerk in charge is ill) may throw out the system for some time. There seems little doubt upon practical grounds that the compromise effected, for example, in *Simon's Income Tax*, and continued in the work we are now considering, is better, the law being bound strongly as at some known date, and thereafter serviced by supplementary pages in a loose leaf binder, until the time comes to replace one of the bound volumes. This course is contemplated with the present work, in which new bound volumes will be made available when necessary, and meantime the fortnightly service will ensure that, by reference to the appropriate bound volume and the latest service sheets, the law can be found with a time lag of no more than a fortnight. The initial issue suffers unavoidably from the need for determining a fixed day for its completion, this being May 17, 1951. There is accordingly issued, with the four volumes of the main work, a fairly voluminous collection of loose leaves properly placed in their service binder, bringing the whole completely up to date as at the time of issue to the public. It was the irony of fate that, between completion of the four bound volumes and their distribution to readers in the ordinary way, there should have occurred a general election, fought to some extent upon the issue of removing controls of the sort to which the work refers. The mischief (using that word solely with reference to the matter of which we are speaking, namely the keeping up to date of such a book) resulting from the election and the change of government has, however, been negligible, for it is now seen that, whatever may have been said in the course of the election, there is no

prospect of widespread scrapping of controls. There have already been new ones, notably upon currency, and even as this review is being written the newspapers are forecasting still more widespread measures for controlling industry, which will make it even more necessary than it was before to be provided with a reliable and comprehensive clue. If by some miracle of international adjustment and commercial and industrial recovery it became possible to dispense with a large part of the controls, of which nearly everyone complains, it would still be necessary to possess some work of this kind for reference, whenever one wished to know whether a particular control had gone or not. The scope of the controls existing at the present day is, inevitably, not realized precisely by anyone who has not had occasion to study them from the point of view of compiling such a publication. Members of a given trade know broadly how things work, and all the leading trade associations issue guidance to their members, so that customers also get a general idea. But the same persons who are traders in one field are customers in others ; in yet other fields they have no interest, so there can be few persons even among lawyers who realize, until they have occasion to look into the matter, how extremely wide reaching are the topics with which a work of this sort keeps them in touch ; brassieres, fresh fruit, and road haulage wages, are items picked at random from a single sheet of the cumulative supplement, and there is scarcely any human activity today in which an Englishman or Englishwoman may not (in perfect innocence) commit a punishable offence—and after doing so, or in fear of doing so, stand in need of professional advice. Hence the need for lawyers, above all, to inform their minds completely upon the scope of the controls.

At the beginning of title I in the first volume there is a " Preliminary Note on Controls Generally," which is a masterly account of the growth and gradual changes in the system, from the Defence (General) Regulations, 1939, to the present day. There have, since the end of the hostilities which began in 1939, been the Supplies and Services (Transitional Powers) Act, 1945 ; the Emergency Laws (Transitional Provisions) Act, 1946, and the Emergency Laws (Miscellaneous Provisions) Act, 1947, relating to controls in general, as well as several statutes having a particular application. Apart from these governing provisions, there has been a gradual shifting of emphasis from controls applying to all sorts of activities and to industry and commerce generally, to those relating, more usually, to particular trades or groups of trades. There was a parallel process started about the middle of the first world war, when it will be found, by persons who have occasion to look back to the publications of H.M. Stationery Office at that time, that the paper-covered collections relating to commerce and industry came to outstrip all other topics.

The emphasis in those years was on food : this is still true, but today almost everything is controlled in one way or another before reaching the consumer, and an admirably readable examination of the different modes occurs in the Preliminary Note already mentioned. In the same volume comes all necessary information about wages regulation, exports and imports, and some other matters. Volume 2 is devoted to finance, including purchase tax, followed by textiles. Volume 3 is food and feeding stuffs, and Volume 4 industrial materials and miscellaneous goods and services.

The whole is grouped in " parts," and these are divided into " titles " consecutively numbered throughout : the arrangement is familiar to most of our readers, particularly the very useful placing of a black title number on each page.

The indexing, and the apparatus of lists and references, is remarkably well done, and calculated—once the user of the book has taken the slight trouble involved in mastering the plan—to enable him to find anything in the shortest time.

It has been to the advantage of traders and legal practitioners, during the second world war and afterwards, that in addition to the official publications there have been such annotated and cross-referenced collections as the *Emergency Legislation Service* and now *Halsbury's Statutory Instruments* and the present work on commercial controls : this development is, indeed, something more than an advantage enjoyed by the present generation over the generation of the first world war. The prolongation for six years after the ending of hostilities of a state of the world which is neither war nor peace has enormously added to the complications of government and of daily life, and intensified tension in the international and economic spheres makes it only too probable that lawyers will be kept busy, following still further developments of which (for practical purposes) they can keep track only by providing themselves with a " service " complied by persons whose business it is to produce such compilations. No practitioner, trader, or official could do this adequately for himself.

We have mentioned already the fortnightly issue of the " service " to this work. We should add that the periodical issues are themselves provided with a stop-press sheet, so as to bring to the notice of subscribers any changes coming about in the interval while each fortnightly service is in the printer's hands. We have already had occasion to prove the utility of this, picking up from one of the " stop-press " sheets in the " service " issued at the outset, with the four bound volumes, a piece of valuable information not elsewhere previously published. Moreover, the lists of Instruments accompanying the work cover both those instruments which are in force and those which have been revoked, so that a subscriber, concerned for the moment to ascertain how the law has treated the maximum price of bolsters or whatever it may be, can inform himself not merely upon the current position, but on what has happened in the bolster world since prices began to be controlled. This is a point which is more important to the practising lawyer than he always realizes. It can be taken for granted that, before advising a client, he will study the existing law, but we are inclined to think he is often content to do no more, relying upon a general memory of what has gone before, for any issue which arose in the past. In most spheres of law this is about all he can do, but if he finds himself in conference with a commercial client, whose mind may well be full of grievances about controls which have been altered, it is just as well for the lawyer to remember the list of revoked Instruments in the present work, so that he may be able to turn them up if wanted. In addition to the complete chronological list of Instruments (including revoked Instruments) and the lists of revoked Instruments at the back of each title, there is of course the subject index, which is the right approach when the year and serial number of a particular Instrument do not happen to be known ; there are also lists of the provisional, un-numbered, and miscellaneous Instruments, which are sometimes maddeningly difficult to find through official publications. (It always seems to happen when we have to refer to an Instrument not appearing in the S. R. & O. or S.I. volumes that we need it in a hurry, but however great a hurry anyone is in, he will find what is wanted here, both in the tabular statement and in the appropriate position in the book.) One more special feature, which is new so far as we remember, may be mentioned. This is that the publishers undertake to supply, so far as they are procurable, loose copies of documents, such as schedules of limited operation, which have not been printed in the series, and a set of addressed prepaid post cards for ordering these is included in a pocket. In noticing the work, we have concentrated rather upon these external features, which are those directly affecting daily use of the work. For its accuracy and reliability, there is the assurance given by its having been prepared by Messrs. Butterworths legal editorial staff, with their experience of this sort of thing since 1939.

It is a painful thought that the control of commerce by what may (broadly) be called emergency provisions should, more than six years after the second world war, involve legislative provisions running out, in a work so carefully compiled as this, to well over two thousand pages—but so it is. This lamentable bulk, in the working law with which the trader, his customer, and his adviser are condemned to struggle by the present condition of the world, is the measure of the need for such a publication.

NEW COMMISSIONS

BERKS COUNTY

Mrs. Dorothy Sarah Adams, Grove View, Cold Ash, Newbury.
Colonel Sir John Renton Aird, Bart., M.V.O., M.C., Forest Lodge, The Great Park, Windsor.
Henry Booth, Boar's Hill Heath, Boar's Hill, Oxford.
James Macdonald Cobban, Abingdon School, Abingdon.
Mrs. Heather Lindsay Dunning, Yew Tree Cottage, Fifield, nr. Maidenhead.
Arthur Lincoln Baron Hay, Acres, Hungerford Lane, Bradfield.
Cecil Lewis Morgan, 39, King's Road, Sunninghill.
Harold John Cooke Neobard, O.B.E., Charters, Calcot, Reading.
Miss Catherine Julia Sinclair, Lady Place, Sutton Courtenay.
Mrs. Lilian Joan Christiana Sutton, Green Trees, Greenham Common, Newbury.
Mrs. Joan Priscilla Yeo, Chapel House, Shurlock Row.
Air Commodore Cresswell Turner, A.F.C., Shinfield Court, Three Mile Cross.

SUNDERLAND BOROUGH

Kenneth Wilkinson Black, 14, Peareth Grove, Sunderland.
George Medwell Johnson, Bretton, Gillas Lane, Houghton-le-Spring, Co. Durham.
Andrew George McLellan, The Gables, Whitburn Road, Cleadon, nr. Sunderland.
Mrs. Anne Morgan, 31, Barbara Street, Sunderland.
Mrs. Elizabeth May Parr, 4, Ashbrooke Mount, Sunderland.
John Christopher Simpson, 179-181 Durham Road, Plains Estate, Sunderland.
Miss Marjorie Helen Wait, 20, St. Bede's Terrace, Sunderland.
John Edward Wanless, 50, Corporation Road, Sunderland.

WENLOCK BOROUGH

The Hon. Honora Elizabeth Dundas Field, Bourton Manor, Much Wenlock, Salop.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 86.

MAN OR BEAST ?

Two brothers appeared at Stafford Assizes on November 26, 1951 ; one brother had been committed for trial upon two charges of inflicting grievous bodily harm, contrary to s. 18 of the Offences Against the Person Act, 1861 and the other brother had been committed upon two charges of assaulting a police officer in the due execution of his duty, contrary to s. 38 of the same Act.

For the prosecution, it was stated that on October 16, 1951, a police officer was examining lock-up property in Dudley, when he observed the brother subsequently charged with offences under s. 18 of the Act, standing at the entrance of a yard leading to his home. The defendant was not properly dressed, and his hair was ruffled. He had previous convictions for all types of breaking offences and had recently been released from prison, having served four years' penal servitude. He was known to the police officer.

The constable politely asked defendant if anything was wrong, whereupon defendant made use of obscene language, and ran down the yard. The officer followed, and when some twenty yards along the opening, the defendant picked up a building brick and hurled it at the officer. The brick struck the officer on the left side of his head, necessitating medical treatment.

Several attempts were made by other officers to arrest defendant, and at 10.50 *p.m.* the following day he was seen at his home. He was told that he was going to be arrested and charged with an offence under s. 18 of the Offences Against the Person Act, 1861. He then punched a police constable on the shoulders and upper arms, and attempted to stab him with a knife. He followed this by attempting to jab a cup into the constable's right eye. He was handcuffed, and whilst being conveyed to a police car, bit the constable on the arms, causing very serious injuries.

Whilst defendant was being apprehended, his brother ran from the yard to the house and punched one of the officers assisting in the arrest. He then endeavoured to free his brother from the custody of the officers, at the same time repeatedly kicking and punching them. The second brother maintained this violence whilst the officers were struggling with his brother, and eventually both men were overpowered and arrested.

The brother charged under s. 18 of the Act was sentenced to five years' imprisonment and two years' imprisonment, the sentences to run concurrently.

Addressing him, Mr. Justice Streatfeild said that the evidence in the case was the most astonishing he had heard for some time ; defendant's behaviour looked as though it had come from a book of fiction and it seemed as though he were an animal rather than a man, and that what ought to be done would be to put him in a strong iron cage at a zoo.

The learned judge said that the case of the other brother was very different and he appeared to have taken his cue from his brother. The second brother was bound over for twelve months.

COMMENT

Section 18 of the Act 1861 covers many offences and extends to three types of assault, *viz.* : wounding or causing grievous bodily harm to any person ; shooting at any person and, lastly, attempting by drawing a trigger or in any other manner to discharge any kind of loaded arms at any person. Each of these species of assault may be carried out with any one of five intents, *viz* : to maim, to disfigure, to disable, to do some other grievous bodily harm or, lastly, to resist or prevent the lawful apprehension or detainer of any person.

Conviction of an offence under this section may be punished by penal servitude for life, and the charge may not be tried at quarter sessions.

It will be recalled that *R.* v. *Ashman* 1 F. & F. 88, decided that it is not necessary in order to secure a conviction under s. 18 that the injury suffered by the person assaulted should be either permanent or dangerous ; on the other hand, where wounding with intent to do grievous bodily harm is charged, it is necessary to constitute " a wounding " within the statute that the continuity of the skin has been broken. If the skin is broken, the nature of the instrument with which the injury has been inflicted is immaterial, and thus, where it was proved that a hammer had been thrown at a person striking him on the nose and breaking the skin, a conviction for wounding with intent was recorded.

The maximum punishment provided upon conviction under s. 38 of the Act of 1861 is two years' imprisonment, and offences under this section may be tried at quarter sessions. It has been held that the fact that a defendant did not know that a person assaulted was a police officer or that he was acting in the execution of his duty furnished no defence to a charge laid under s. 38.

(The writer is indebted to Mr. C. W. Johnson, the chief constable of Dudley, for information in regard to this case.) R.L.H.

No. 87.

A TOO ENTHUSIASTIC VOTER

A man of twenty-nine appeared before the Cheltenham Magistrates on November 8 last, charged with being guilty of a corrupt practice in that he, at a Parliamentary election, voted in person as another named person, contrary to s. 47 of the Representation of the People Act, 1949.

The defendant pleaded guilty, and it was stated on behalf of the prosecution that after voting in his own name, defendant entered another polling station and, after tendering a polling card in the name of his father-in-law, obtained a voting paper, went to a booth, and then put the voting paper into the ballot box. Whilst he was doing this, the father-in-law arrived to vote and when defendant was informed that he had committed an offence, he said that his father-in-law had gone to a hospital and that he (defendant) did not think he would be back in time to vote, so he had done so for him.

The court fined defendant £10 and ordered him to pay ten guineas costs.

COMMENT

There have been a surprising number of convictions for offences of this nature arising out of the recent general election and inhabitants of other countries, who have to be forced to the polling station under penalty of heavy fine if they fail to vote, must marvel at the enthusiasm shown by some of the electors in this country who are not only willing to perform their proper civic duty but are anxious to go far beyond it.

The recent Representation of the People Act, contains stringent provisions designed to prevent abuses at parliamentary and local government elections, and although in part it codified the existing law, it also created many new offences.

Section 47 of the Act enacts that a person shall be guilty of a corrupt practice if he commits the offence of personation and the methods by which the offence of personation may be committed are detailed in subs. 2 of the section. It is to be noted that s. 146 (5) of the Act provides that a person charged with personation shall not be convicted by a court of summary jurisdiction except on the evidence of not less than two credible witnesses, and by subs. 4 of the section, a person convicted of a corrupt practice shall be liable, when tried by a court of summary jurisdiction, to imprisonment for three months and a fine of £100.

Section 154 of the Act prescribes the period within which a prosecution for personation must be commenced.

(The writer is indebted to Mr. Eric D. Watterson, LL.B. clerk to the Cheltenham Justices, for information in regard to this case.) R.L.H.

PENALTIES

Altrincham—November, 1951—failing to report for fifteen days' training with the Army Catering Corps—fined £5. Defendant aged thirty-seven, told the court he had served for six years during the war and did not report for training because his financial position would not allow it.

Long Ashton—November, 1951—stealing 11 *cwt.* of steam coal value £1 19*s.* 7*d.*—two defendants. Each defendant fined £10.

Long Ashton—November, 1951—receiving the coal referred to above, fined £50. One of the two thieves gave evidence for the prosecution against the receiver. The latter later sold the coal as anthracite to the wife of a licensee.

Warwick Assizes—November, 1951—fraudulent conversion of cheques value £580 (six charges)—four years' imprisonment. Defendant, an almost blind man of thirty-seven, was appointed honorary treasurer in a County for the Guide Dogs for the Blind Fund. The post was unpaid but defendant received reasonable expenses and occasional bonuses. He paid donations into a Bank Account and forwarded money half yearly to the Association. In two years he handed over more than £600 to the Association but retained £2,435 for himself. The lack of supervision exercised by the Association was criticized by the learned judge.

Oldbury—November, 1951—assault—(two charges)—one month's imprisonment each charge (concurrent). Defendant, aged forty-one, on two occasions went to fetch his wife from her sister's home to get him some dinner. On each occasion he struck the sister. On the first occasion he struck her in the back, gripped her by the throat and kicked her ; a week later he struck her in the face splitting her jaw. Sister required hospital treatment.

(In Lighter Vein)

CHRONICLES OF A MIDDLE-AGED MAN

By J. TILLOTSON HYDE

There was once a Certain Man who had a Big Heart. But he had no Children, hardly any Relatives or Friends, not much Money or Property, and most of his Time was spent in Earning his Living. However, he had an Urge to Do Some Good in the World; to Leave Things Better than he Found Them; and to be generally Helpful and Useful; for he had a very Active and Tender Conscience. So, as he remembered that he had sometimes been Very Happy when he was Young, he wished Children everywhere to be Happy. Whenever he could help or encourage or comfort a Child, he would do so.

But he was surprised to find that Other People did not always wish him to busy himself with Children, especially if the Children were not their own. "For," they said, "if you have anything to give by way of presents and gifts to Children, Ours can do with it."

And sometimes they tried to make him a Godfather to their Offspring; and when he would not, because he would rather Do Things than Profess Things, they were displeased and told the Children to stop calling him Uncle. Other Parents, who did not know him very well, did not care for him to be Friendly even with their Own Children. "It would be All Right," they said, "if he were a Rich Man or even a Nice Gentleman. We have to Do Our Best for our Children, and to give them the Right Society."

They said these things because they Judged by Appearances (not having much Imagination), being rather Too Busy to think much; and, to tell the Truth, he was not always Very Presentable; he was not of Very Good Appearance, and he was Too Kind to Tradesmen to Go Into Debt in order to be always Well Dressed and to Appear Rich. As for Other Things That Count, in his case these were mostly Of The Mind, such as Education, Culture, and Mental Attainments, and, as they are not Worn on the Sleeve, they could not be Discovered quickly From Appearances. So he was considered of No Importance, and not of much Use to Our Children.

Sometimes he would have been Kind and Friendly with Poor Children, whose Parents did not much care about Godfathers and Prospects. But he would be Saddened when a Child at whom he had Smiled, or with whom he had Exchanged a Few Words was smacked by its Mother, who asked if it had Forgotten what it had Been Told about Speaking to Strange Men.

So after these and Other Experiences, he thought that perhaps Children had enough Parents and Relations and Friends and Protection Societies and Teachers and Officers and People to Look After their Welfare, without any Assistance from him. And so he decided that perhaps he could be of more Help Elsewhere.

It was the same with Animals. Wherever he tried to help in a Case of Cruelty, he was often told Not to Interfere, and was asked If he had any Animals Of His Own. When he had to own up that he had not, as it would be Cruelty to Keep them Shut Up in the flat where he lived, he was told that He Knew Nothing About Animals, and Strongly Advised to Mind His Own Business.

However, he Persevered and would not Give Up. And for some years, he tried in Many Ways to Be of Service To The Community. But he would find that, as soon as he discovered Objects of Compassion and Worthy Causes in which Help was Wanted, there would appear to be Societies and Organizations which would Bring Everything To Bear upon the Problem: Secretaries and Presidents, Committee Members and Officials would All Be Ready at Headquarters (well Equipped and Furnished for the Job), to Investigate Authentic Cases which were Properly Brought to their Notice. They had Inspectors and Report Clerks whose Job it was to do this and Nothing Else.

So for a Long Time this Man had to Defer Helping People or Children or Animals, and to Look Out for Something Else Worth While, which at the same time, was not Already Covered by Existing Aid Organizations and Representatives and Guardians.

Once or Twice he found People who were apparently Under the Weather and who seemed to Need Help. And sometimes he was gratified to be Asked Straight Out to Be of Assistance. But he would often be Surprised and sometimes Disappointed to find that he had been Wasting his Time, for Various Reasons. In some Cases, he would find that he had been giving Time and Trouble and Money to People who could Well Afford to Pay for Everything, but it Appeared that they Did Not Want to Go to The Bank to Cash a Cheque. In other Cases, it Turned Out that they had only wanted Someone to Fill a Gap while they were Out of Friends with Someone Else who had now Stopped Being Silly and Had Come Back.

So it seemed as though there was not Much Satisfaction in this Search for People Who Needed Help; and he had to Think Again as to how best to Be Of Service to The Community.

One Day, he Spoke of These Things to an Acquaintance, who was Something of a Thinker. And the Friend advised him, saying, "There must be Many People who would be Only Too Glad to find a Friendly Hand and a Warm Heart when it Was Wanted. Such as People who were No Longer Young, or who had Few or No Friends, or who were Not Too Much Blessed with this World's Goods, or who were Childless, or who had Physical Handicaps of Some Sort, or who were Not Too Strong, or who had had Serious Illnesses, or who had Gone Through it in The War, or who had Fairly Had Something To Put Up With in Many Ways. You could not do better than Be Of Help to Any or All of These." So the Middle-Aged Man wrote down Lists of all those Different Kinds of People who could Do With Being Helped, so that he could begin to Look for Such Folks.

Before he began His Search, he thought it would be a Good Idea to Go Through the Names of those he knew, before beginning with Strangers. He was a Great Believer in Old Sayings, such as Charity Begins at Home. And so, while he was Musing on these Things, it suddenly came to him in a Flash of Inspiration that his own Name could be written under every Heading of His Lists of People Who Should be Helped! He was Very Much Surprised at this, until he remembered that he had sometimes been Very Unhappy, and Friendless, and not Feeling Quite on Top of Things; and that he had also been Very Worried, knowing that he would have to Manage As Well As He Could, because he himself knew no Society, or Person, to whom he could go, when He was Having a Bad Time.

Then it came to him by a Sudden Revelation, that he had been Looking For Someone to Help, and to Encourage, and to Comfort and Cheer Up, when All the Time he had been One of the Worst Cases He Had Ever Come Across.

And he fell a-laughing to think how he had been Wasting His Time. He saw that if he Devoted Himself to Giving Time and Trouble, and his little Bit of Money, and Most of All, his Thought, towards Improving his Own Lot, there might at least be One Person Made Happy, and so he would be successful in his Quest and Desire to Be Of Some Use in the World. The Fact was, taking into Consideration All the Different Kinds of People that his Acquaintance had mentioned as being Worthy Objects, of all the People whom he knew, he himself was the One Most Needing Help !

And so he decided to Start at Once to be Of Service, knowing that he, the Giver of the Service, would be made Happy because his Good Deeds would be Well Received and Most Thoroughly Appreciated ; and knowing also that he, the Receiver of all these Kind Deeds, would be Very Happy, being truly Grateful not only for the Helping Hand but also for the Kind Thoughts which prompted these Services. And so he began to be Extremely Happy, partly because he was not Obliged to Waste Time any longer in Looking for Someone to Help, and partly because, for the First Time in his Life, he began to Have a Good Time. The Best of it was, that he was immediately able to Be Good to Someone, and it was much more Fun than waiting for Someone Else to Be Good to him. As he often said, when Talking Over his Improved Condition, he might have Waited for Ever. And he was probably Right.

(In Lighter Vein)

REX *v.* ROVER

By LAURANCE H. CROSSLEY

Lawyers are sometimes heard to complain that they are nowadays required to do too much reading. Not only must new Statutes be studied and Statutory Instruments examined, but, to keep up to date, reported cases must also be perused.

It is, therefore, a cause of relief to overworked lawyers that only High Court cases are officially reported : were summary cases also reported, his task would be well nigh beyond human capabilities.

There are, however, many cases decided in summary courts which not only contain much of interest to the student of human nature, but also disclose many subtle and technical legal points.

Such a case was recently decided by the court of summary jurisdiction sitting at Bumpley. The facts of the case were unusual, the legal issues extraordinary, and the legal arguments unique : for these reasons the case is reported without apology.

Bumpley is too big to be called a village and somewhat small to be called a town. It is a rural community where little happens which is not ordinary and where everyone knows everyone else and everyone else's business. Here had recently arrived Mr. Gonne-Potteigh on his retirement after many years service as a justices' clerk.

He was of choice a bachelor, and of necessity, in view of his profession, a pedant. His pedantry did not appease the Bumpley inhabitants, and it was thought that he carried things too far when, shortly after having witnessed all the play in the last Test Match versus South Africa, he gave the Captain of the Bumpley XI out for " obstructing the field."

On September 7, 1951, Mr. Gonne-Potteigh was seen by P.C. Heavyside to be doing his shopping. He was riding his pedal cycle and was accompanied by his dog. Mr. Gonne-Potteigh was seen to stop outside the butcher's where he waited until the shop was empty of customers. He then called his dog to him, said to it " Go on, good boy, fetch it," mounted his cycle, and pedalled quickly round the corner into Meadow Lane. The dog ran into the shop seized a joint of meat before the startled eyes of the butcher, and made off with it.

The dog rejoined his master in Meadow Lane. Mr. Gonne-Potteigh took the joint from his faithful hound and was putting it into his basket, when a red faced and out of breath P.C. Heavyside bore down upon them.

" I saw your dog steal that meat and am going to report you for receiving stolen goods and whether you say anything or not it will be used as evidence," he said all in one breath. He was as good as his word, and in due course a summons was served alleging the receipt by Mr. Gonne-Potteigh of a joint of meat which had been stolen, he well knowing it to have been stolen contrary to s. 33 of the Larceny Act, 1916.

At Bumpley Petty Sessions on October 15 the prosecution was conducted by Inspector Webster. He did not make an opening address but called his two witnesses the butcher and P.C. Heavyside who told the Bench the simple facts. Mr. Gonne-Potteigh who was unrepresented, did not cross-examine the butcher, but elicited from the constable that his dog, which had been known to the witness since puppyhood, was a mongrel aged three years, who was neither more nor less intelligent than a normal dog.

That being the end of the prosecution Mr. Gonne-Potteigh proceeded to submit that he had no case to answer. His points were that no one could receive stolen goods unless those goods had been stolen, and that goods could not in law be stolen by anyone who had not the mental capacity to form the intention permanently to deprive the owner thereof. A dog, he submitted, had not the mental ability to form a criminal intent, and therefore the meat had not in law been stolen at all, and he was accordingly not guilty of " receiving."

Whatever the criticisms which can be levelled against the inhabitants of Bumpley, including the justices, it had never been suggested that they were anything other than dog lovers to a man. Mr. Gonne-Potteigh's aspersions cast upon the intelligence of a dog were not only deplorable and unjust but downright caddish and un-British.

Inspector Webster headed the defence of man's best friend by referring to the dogs who guided blind people, and also to police dogs. The former were mentally able to safeguard blind people from the dangers of traffic which often proved too much for human beings : no case was known of a dog-assisted pedestrian being involved in an accident, but look at the accident statistics of human pedestrians who could only rely on their own frail humanity. Police dogs were called in to effect arrests when human beings had failed.

Many other proofs of dogs' superior mental powers were then forthcoming from Inspector Webster and the members of the Bench : each tried to outdo the other with his own reminiscences of canine intelligence. The public present were regaled with stories of dogs giving alarms of fire, dogs imposing their wishes on adoring though unwilling owners, a dog who collected the morning papers but who would only accept *The*

Times and refused all colourable imitations, and so on and so forth.

The defendant was temporarily forgotten, although he was trying vainly to make himself heard. Finally, he was able to address the Bench when he said that it was ludicrous to apply to a dog the criminal law of England: they were only dumb animals, and the sooner they were treated as such the better.

The Bench thereupon retired, and in due course returned, when the chairman announced that they found there was a case to answer. It was admitted that the defendant received the meat and they were of the opinion that the dog had stolen the meat. With regard to the dog's mental powers they found that a dog had considerable intelligence, that in some respects it was inferior to a human, but in others it was superior, and that on balance, although dogs' intelligence varied as between dogs in the same way that some humans were more intelligent than others, a dog's intelligence was roughly as good as a human being and that therefore they looked upon humans and dogs for this purpose as equal. He wished to make it perfectly clear that the finding that the dog had stolen the meat was not to be taken as a reflection on the dog, as they found that at the time it was acting under the defendant's coercion, and accordingly exonerated it from all blame.

Mr. Gonne-Potteigh listened to this pearl of judicial wisdom with an air of tolerant disdain. He now played his ace of trumps. "If you are treating the dog as a human being for this purpose you must do so for all purposes. If you will look at s. 50 of the Children's and Young Persons Act, 1933, you will see that no child under the age of eight can be guilty of an offence. The prosecution's own evidence is that my dog is aged three, therefore it cannot commit an offence, therefore it did not steal the meat and therefore I can't receive stolen meat if the meat wasn't stolen."

The Bench again retired, and on its return the chairman announced that the case would be dismissed.

Inspector Webster, who had spent the time during which the Bench retired reading *Stone*, went up to Mr. Gonne-Potteigh, who had had his dog with him during the hearing, and said "If everyone else is treating the dog as a human being, so shall I. I say that this dog has a guardian who is not exercising proper care and guardianship and that it is exposed to moral danger, and I shall take it to a place of safety and bring it before the juvenile court as being in need of care and protection." He thereupon seized the dog's lead and led it from the court room.

This unexpected turn in events caused a certain amount of amusement to all present except the defendant and the chairman of the Bench. The former was now without his only companion: the latter was chairman of the Juvenile Panel.

CAP AND BELLS

The Festive Season is at hand, and all those industrious persons who have engaged in serious pursuits for the past twelve months are laying their cares aside and turning their thoughts to Christmas trees, paper hats, revelry and (so far as the Minister of Food will permit) feasting. The guardians of law and order are not alone in looking forward to a respite from their labours. Even so dangerous an occupation as parachute-jumping is to be adapted to Yuletide purposes, as a recent advertisement in *The Times* Personal Column has shown. The original announcement gave no inkling of what was intended:

> "DARING PARACHUTIST required for private continental mission in December. Experience essential in night-drops; small target area."

The explanation has since been forthcoming that a hotel in Switzerland projects this unusual method of bringing into the midst of a group of children the person of Father Christmas himself, who will drop from the sky with a load of toys. Worshippers of tradition may murmur at the departure from the normal and proper method of descent by way of the chimney, but even they will secure partial satisfaction from the provision of a sledge with reindeer, complete, to convey the old gentleman to his destination if bad weather should cause him to overshoot his mark and come to earth some distance away. Thus the arts of war are to be adapted, at this Season of Goodwill, to the uses of peace; and if it is inappropriate to talk of the airborne Saint turning swords into ploughshares, it is at least permissible to rejoice at the substitution of balloons for bombs.

At home the profession of a public auctioneer has for once had its austerity tempered by the sale of some of the exhibits at the South Bank, a heterogeneous collection which bids fair to out-Carroll Carroll in the incongruity of items. It is most fitting that pride of place should be given, among the exhibits from the Lion and Unicorn Pavilion, to the White Knight—that lovable character, with scanty hair and sad and gentle eyes, who was always inventing things of considerable ingenuity. There he stands, with his little deal-box upside down, and with the lid hanging open, to prevent the rain from spoiling the provisions it once contained, mounted on his horse, with anklets round its feet "to guard against the bites of sharks," and a mousetrap on his saddle (not very likely, perhaps, that there would be mice on the horse's back, "but if they *should* come, I don't choose to have them running all about"). Then there are "approximately 175 white plaster doves"—themselves an emblem of peace—which are "to be disposed of by private treaty"; linksmen's umbrellas, plastic aprons, used white collars, toilet-rolls and a stop-watch. These are only a few out of many, but the list goes one better than the "shoes and ships and sealing wax, and cabbages and kings" of the White Knight's creator.

To add to the seasonal gaiety prospective purchasers are warned that the statue of the White Knight must not be used in any manner which may give rise to a claim by "the copyright-holders, Messrs. Walt Disney Mickey Mouse, Limited." What could be more delightful than this juxtaposition of the names of the two greatest characters of fantasy, in the nineteenth and twentieth centuries, with the legalistic formality of the Copyright and Companies Acts?

Thus do these grave and reverend persons disport themselves at this Christmas Season, blissfully forgetful of their usual sober and weighty business. How much harder is the fate of the licensed jester, the purveyor of light relief to this august Periodical! There can be no respite for him; even though he cannot go so far as to describe this as a Roman holiday, with the prospect of being butchered to enliven the proceedings, it is for him no more a holiday than for the proverbial busman.

Herein lies the tragedy of the clown who, like his fellow in *I Pagliacci*, is doomed to come on the stage and amuse the audience whether he himself is gay or sad, elated or in the depths of depression. Just this once in the year he would love to have his little fling, like everybody else—to write seriously, for once, of matters that are nearest his heart—of the ecstasy, perhaps, that comes with a sudden view of the Westmorland fells, or the thrill of the first glimpse on the horizon of Salisbury Cathedral; of

the soul that rushes out at him from the canvas of a Rembrandt self-portrait, or the grace and dignity breathed forth by a sculpture of Michelangelo; of the sunlight reflected in the waters of the Grand Canal in Venice, as he stands in the Piazza San Marco; of the strange, unearthly beauty of the Minuet in the *Jupiter* Symphony, or the fearful joy of the great D minor chords that herald the entrance of the Statue in *Don Giovanni*. These things and others like them—the great moments of life—he would fain wax eloquent about; once a year, surely, he ought to be permitted to take a little time off from his weekly toil and really let himself go!

But no! Even at Christmas he must keep his nose to the grindstone, and go on fooling, with a sob in his throat, whether he will or no. Poor Jack Point, the Jester in *The Yeomen of the Guard*, has much the same experience; he too has the urge occasionally to come out with a few observations on serious topics—but how, alas! does his employer react?

" He will ask then and there,
With an insolent stare,
If you know that you're *paid* to be funny!"

Far be it from the present writer to accuse his Editor of any remark in such doubtful taste, but if the wretched hack ever dared to try it on, a similar innuendo would lie concealed, like a barb, in that soulless, unsympathetic phrase—" The Editor regrets . . . "

A.L.P.

QUESTION PAPER

(The time allowed for Part I shall in no case exceed twice the time allowed for Part II, whichever shall be the greater.)

PART I

1. Can a French Polisher be domiciled in England?
2. Consider the legal effects of robbing Peter to pay Paul. Discuss Peter's remedies and Paul's rights.
3. " What the Bishop said to the Actress is not evidence " (Crust, M.R.). Give your guarded opinion.
4. Distinguish between the powers of the Attorney-General and general Powers of Attorney.
5. Would you require a Jury of Matrons to swear an Affidavit of Plight and Condition?
6. " Let your own discretion be your tutor " (Hamlet, iii 2). What do you say about this?
7. " This Act shall not apply to Scotland " (The Welsh Bookmakers Consolidation Act, 1949.) Analyse this statement.
8. If you saw the signature " Gordon Richards " on a pleading what conclusion would you reach? Would the case necessarily be a winner?
9. Does your conception of " The Guineas " differ from Charlie Smirke's? If yea, to what extent?
10. What is the essential difference between an Affidavit and a Conveyance?
11. What do you understand by " agreed corespondents "?

PART II

1. What sort of title (if any) can be acquired in Black Market Overt?
2. What do you understand by (*a*) an old retainer; (*b*) beyond redemption?
3. " A clog on the equity is like a fly in the ointment " (Thirst, Lord Ordinary.) Decipher and comment.
4. If Cambridge sank Oxford in the Boat Race what kind of action would lie and what would be the appropriate Tribunal?
5. Can a parrot commit perjury?
6. What if anything can a bare trustee do that a bound bailiff cannot?
7. Distinguish silk from velvet. Contrast it with nylon.
8. " Celerity is never more admired than by the negligent " (*Anthony & Cleopatra* iii, 7.) How far is this true of (*a*) Judges, (*b*) a running-down action?
9. How far if at all are Marriage and Divorce governed by the principle of *volenti non fit injuria*?
10. Distinguish between (*a*) taking in a silk and taking in a client; (*b*) reserving a judgment and reversing a judgment.
11. Is it (*a*) insulting, (*b*) defamatory, to say to a barrister " Are you effective "?

J.P.C.

MODERN LEGAL MAXIMS

I

Gentlemen's Agreements are quite often the foundation
Of ungentlemanly conduct and of years of litigation.

II

From Matters of Principle lawyers derive
A very great deal of what keeps them alive.

J.P.C.

THE CHRISTMAS EXTENSIONS

'Twas the Court before Christmas, all over the place,
The Victuallers, Licensed, were setting the pace,
Extensions they wanted, determined and set
That late Xmas shoppers their gargle could get.

The Clerk, in his place, was uneasy, for he
Was a gentleman only addicted to tea;
He mused, with a sigh, which resembled a yawn,
Of " Drunks " at Court Special on next Christmas morn.
He thought of the fees, to be paid on the spot,
And determined to close ev'ry House " on the dot."
So he turned to his Chairman, and said, with a sneer,
" What a fuss people make, just to sell extra beer!
" I very much doubt, though for knowledge I'm paid
" If ' Circumstance, Special,' applies to ' The Trade '
" For purposes (Liquid) to sell after ten—
" This Season is constant, and not ' Now and Then.' "

His chairman, alas, took an opposite view,
Dismissed the suggestion with haughty Pooh-Pooh!
" The occasion is lawful, of that there's no doubt,
" And WHITTALL v. KIRBY, for once is right out
" For Christmas is special, I venture to say,
" With the greatest respect to our great L.C.J.
" Besides, you'll remember, if you will but pause,
" The *obiter dicta* of Santa and Claus,
" In ' MERRY v. MOURNFUL,' which laid down the Rule
" That ev'ry tribunal must recognize Yule.
" The case is reported, By HERBERT, A.P.
" In his text-book on ' FREEDOM,' at page thirty-three."

" If that's what you think," said the Clerk, with a snort,
" Then you're bound to end up in Divisional Court."
Resuming his seat then, he had the last word
(But under his breath) " Why, the fellow's absurd!"

" Oh, Bosh!" said the Chairman, " Get on with the job!
" They're all of them granted. Collect the five bob
" From all who've applied." Then he added, aloud:
" If there's any misconduct from one of the crowd,
" At Brewster, in Feb., you will find the Bench ' Hot '
" And of reference to ' compo ' there'll be quite a lot.
" Behave yourselves, all, and be sensible, very.
" Now from Bench to the ' Bar,' may Christmas be Merry!"

JAY DUDLEY E.

IMMUNITY

(Inspired by the Zebra Lines)

When on pedestrian crossings you walk
You are in a manner of speaking in baulk.

J.P.C.

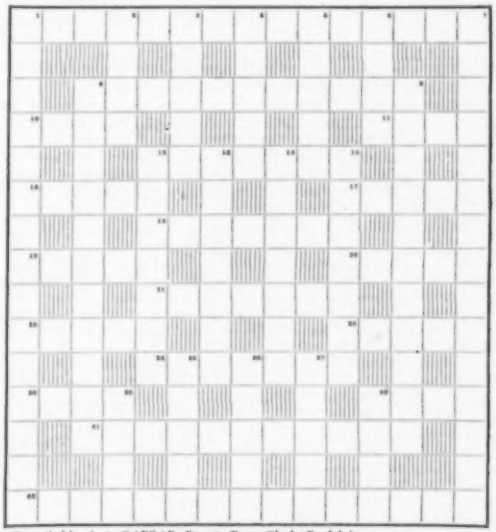
CROSSWORD

ACROSS

1. Under arrest ? (2, 8, 5).
8. Right to interfere (5, 6).
10. Committal proceedings are not required to be conducted in this court (4).
11. Taken *in camera ?* (4).
12. Ancient village (7).
16. Inflicts " a corporall hurt " (Co. Litt. 288a) (5).
17. Under a feudal tenure (5).
18. Formerly an illegal combination in Italy (7).
19. Pupil chirurgeons' intermediate gown (5).
20. Place in the Pound (5).
21. Excuse for non-appearance (7).
22. Advocate of extreme measures (5).
23. Scottish widow's right (5).
24. They should have no objection to taking the oath (7).
28. Transgresses (4).
30. Yield (4).
31. Process for the recovery of Crown debts of record (5, 6).
32. Arise under 15 Geo. 5, c. 18, 20 or 23 (9, 6).

DOWN

1. Not as a plutocrat would act (2, 5, 8).
2. " May either mean before the act done to which it relates, or simultaneously with the act done, or after the act done " (per Denman, C.J., *R.* v. *Arkwright*) (4).
3. Ancient Court (5).
4. Might mean bureaux, as in *Re Dobson* (5).
5. Their presence might necessitate action under s. 85, P.H.A. 1936 (5).
6. Legends without reference to the legislature (4).
7. Undivided estates ? (6, 9).
8. Lawgivers (11).
9. Summons to appear amongst the Partisans ? (5, 6).
12. " Word of Art, and signifieth properly when, by accident, the lands fall to the lord of whom they are holden " (Co. Litt. 13a) (7).
13. " Proprement est tenement qe chescun tient severalment in fee " (Britton) (7).
14. Mythologically administered the *lex talionis* of the gods (7).
15. Commence County Court proceedings (7).
25. Much the same as grava and shawe, according to Jacob (5).
26. He, *mutatis mutandis*, has written on the theory and principles of English local government (5).
27. *Ab intra* the works of Tacitus (5).
29. " Customary contribution laid upon all subjects according to their ability " (Spelm. 505) (4).
30. *In consimili* . . . (4).



Compiled by J. A. CAESAR, Deputy Town Clerk, Rochdale.

The correct solution will be published in our issue for December 29, 1951.

PRACTICAL POINTS

All questions for consideration should be addressed to " The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Criminal Law—*Larceny as bailee—False pretences—One transaction, whether seperate offences.*

Your views on the following point would be much appreciated.

X was bailee of a Morris motor car which was held by him under a normal hire purchase agreement. X approaches Y and negotiates a deed whereby X exchanges the Morris car for a car owned by Y plus payment by Y to X of the sum of £25. On the understanding that the Morris car delivered to him by X was the property X and his to dispose of, Y transfers his own car to X and in addition pays to X the sum of £25.

Police proceedings follow and X is charged with

(1) Larceny as bailee of the Morris car, contrary to s. 2 Larceny Act, 1916.

2. Obtaining a car from Y by false pretences (*i.e.*, the pretence that X was the owner of the Morris car offered by him in exchange and that he was accordingly entitled to dispose of it).

3. Obtaining £25 from Y by false pretences (as above).

X pleaded guilty to the three charges having elected summary trial.

The learned chairman, however, took the point that the prosecution sought to make three offences out of one set of facts. He maintained that as the conversion necessary to constitute larceny as bailee only took place on the exchange of the respective cars, it would not be proper or permissible to convict X of the offence of " obtaining by false pretences " in addition to the offence of larceny. Accordingly the bench dismissed the charges of false pretences.

The prosecution nevertheless take the view that three separate offences were constituted. They pointed out that distinct offences were constituted against (*a*) the hire purchase firm and (*b*) against Y.

Is the prosecution view correct and, if so, can you please quote authority ? SOLE.

Answer.

In our opinion, it would be right to consider these facts as constituting two offences. If X had not deceived Y when disposing of the car to him he would still be guilty of larceny. He adds to that offence that of inducing Y by false pretences to part with the car and money, and as apparently this was all one transaction between X and Y it would seem to constitute one obtaining.

We have not traced any authority directly in point, but rest our opinion on general principles.

2.—Husband and Wife—*Maintenance arrears—Resumption of cohabitation, followed by separation.*

I am the court collecting officer for a petty sessional court which recently made an order on the grounds of wilful neglect to maintain that a husband should pay his wife certain sums every week for the maintenance of herself and children. This money was to be paid through me as the court collecting officer. Recently the husband told his wife that he had arranged a home for her and she and the children went to live with him. At that time there was a fortnight's maintenance owing. There is no doubt that they cohabited together and they lived together for several weeks. The wife then left him saying that his treatment of her made it impossible for her to remain with him and she has asked me to take steps against him for the recovery of the arrears. It seems to me that at the most I can only take proceedings

for the fortnight's arrears that were owing when they first cohabited together, but I can find no authority on whether or not these are in fact recoverable. Can you assist me on this point? SUM

Answer.

As the order ceased to have effect upon the resumption of cohabitation, arrears accruing due after the date of such resumption are irrecoverable. We think, however, that the arrears which accrued before that date can now be enforced, though we cannot cite any authority upon this point.

3.—Public Health Act, 1875—*Nuisance sections applied to noise—Local Act—Repeal of applied sections.*

A local Act provides that "a noise nuisance shall be liable to be dealt with in accordance with the provisions relating to nuisances under the Public Health Act, 1875. Provided that no complaint shall be made to a justice under s. 105 of the said Act unless it is signed by not less than three householders or occupiers of premises within hearing of the noise nuisance complained of." Should this now be read as a reference to the Public Health Act, 1936?

Section 4 (1) of the local Act provides that the several words and expressions to which meanings are assigned . . . by the Public Health Acts have the same respective meanings unless there is something in the context repugnant to such construction. Section 4 (2) provides that "the Public Health Acts means the Public Health Act, 1875, and the Acts amending and extending the same." The significance of this is that the legislature may be deemed to have had in mind not only the Acts amending and extending the 1875 Act which were passed before the local Act but also future Acts having a like effect.

The local Act and the Public Health Act received the Royal Assent on July 31, 1936, and came into operation forthwith.

Section 38 (1) of the Interpretation Act, 1889, provides that "Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted."

In *R.* v. *Stock* (1838) 7 L.J.M.C. 93 it was stated that "If a subsequent Act of Parliament directs a form to be adopted, which is given in a previous Act, the form is thereby incorporated in the subsequent Act; and so far as regards the subsequent Act, will not be affected by a repeal of the previous Act." *See* also *Clarke* v. *Bradlaugh* (1881) 46 J.P. 278, and *R.* v. *Southport Justices* (1873) 37 J.P. 214, before the Interpretation Act, 1889, and *Secretary of State for India* v. *Hindusthan Co-operative Insurance Society* (1931) 58 L.R. Ind. App. 259, after that Act.

It appears that the difference between the principle referred to in the above cases and the provision of the Interpretation Act, 1889, referred to above, must lie in the difference between the incorporation by reference of an earlier Act to which the cases refer and the mere reference to an earlier Act, which is repealed and re-enacted with or without modification, to which the provision of the Interpretation Act, 1889 applies. It is difficult to say in this particular case whether the local Act represents the incorporation of the nuisance provisions of the 1875 Act for the purpose of noise nuisance, or whether the provision of the local Act is merely a reference to the earlier Act and an extension of its provisions; but there appears to be no doubt that the Public Health Act, 1936, repeals and re-enacts with modifications, in ss. 91 to 110 inclusive, the provisions of ss. 91 to 111 inclusive of the Public Health Act, 1875.

With regard to the intention of the Legislature it may be said, on the one hand, that it must have had in mind the repeal of the provisions in the 1875 Act on the same date as the local Act came into force, and also that in any event s. 4 of the local Act shows that it contemplated the amendment and extension of the 1875 Act and that, as similar wording to that in s. 4 is not used in the section under consideration, it therefore intended to use the provisions of the 1875 Act in preference to those of the Act of 1936.

On the other hand it may be said that, when the local Act was considered by the Legislature, the 1936 Act had not received the Royal Assent, and it was for this reason that reference was made to the 1875 Act, and also that it appears unlikely that the Legislature could have intended that all nuisances except noise nuisances should be dealt with in the district by means of the nuisance provisions of the Public Health Act, 1936, but that noise nuisances should be dealt with under the 1875 Act.

In my opinion s. 38 (1) of the Interpretation Act, 1889, applies and, where the local Act refers to the Public Health Act, 1875, and s. 105 thereof, this should now be read as a reference to the Public Health Act, 1936, and s. 99 thereof. ANOR.

Answer.

We agree. We do not regard your local Act as incorporating the nuisance sections of the Public Health Act, 1875 (which were already in force in the urban district). It would be truer to say that, in the application to the district of those sections, it read a new provision into them. We are sure that the Divisional Court would not attribute to Parliament an intention to keep the 1875 sections in force (unnecessarily) for this one purpose, and would rather regard s. 38 (1) of the Act of 1889 as applying. This view is perhaps strengthened by the fact that the two Acts of 1936 did not both come into operation forthwith, as stated in the query. The Public Health Act, 1936, came into operation (*see* s. 347) on October 1, 1937, so that the local Act could not have applied the nuisance sections of that Act to noise nuisances; the Act of 1875 had a run of fifteen months, as applied by the local Act, and then could be naturally treated as superseded.

4.—Rating and Valuation—*Charity.*

It is a rule of law that a hereditament must be valued for rating purposes *rebus sic stantibus*. In *Port of London* v. *Orsett* [1920] A.C. 273; 84 J.P. 69, at p. 305 of the former report, Lord Buckmaster said that the hereditament must be valued with all its privileges, opportunities and disabilities. In *Shiner and Gorringe* v. *Wiltshire County Valuation Committee and Salisbury A.C.* (1930) 11 R. and I.T. 197 and 215, it was held that the assessment of a vicarage must take into account the statutory restriction upon its letting, which precluded there being any tenant other than the incumbent. The principle in this case is distinguishable from that of the cases which decided that no account should be taken of the statutory restriction of rent by the Rent Restrictions Acts in that the latter restriction restricts only the amount of money payable by any hypothetical tenant, whereas the former type of restriction in fact restricts severely the class of hypothetical tenants to persons who are probably of income groups below the average.

Where a residential property is held upon charitable trusts enforceable by the Charity Commissioners and binding upon the trustees in perpetuity, which restrict its letting to persons either infirm or aged and living within a small radius of a particular place, can account be taken of this restriction in assessing the property for rating purposes? It may be assumed that the restriction does have in fact the effect of limiting the potential tenants to persons of the lower income groups, and thereby tending to reduce the rent which a hypothetical tenant would pay. In a Scottish case, *New Prestwick Baptist Church Trustees* v. *Ayrshire Assessor* (1937) 27 R. and I.T. 165, it was held that no regard ought to be had to a restriction imposed by a trust deed. Is this decision to be considered as binding upon English courts, and is there any comparable English decision?

A. TRUST.

Answer.

Church of England parsonages, like docks, may be an unsafe analogy because statutory restrictions are involved. The Scottish decision was given in the Lands Valuation Appeal Court, consisting of three judges of the Court of Session, and must therefore be treated with respect. It will however be seen upon examining it that something turned upon the principle (or supposed principle) that against the public an owner cannot reduce the value of pre-existing premises by voluntarily imposing a restriction on their use. Moreover the judgment was based upon earlier Scottish decisions, and it may be significant that the manse was in fact a small house of no great letting value. Originally put at £30, the gross value was raised to £35; the house was so small that in order to provide a servant's bedroom the kitchen had been divided. Its occupation may well have been improbable, except by a tenant whose income was similar to that of the Baptist minister for whose use it had been reserved by the trust deed. If so, there may have been an element of fact about the decision which may not, as a proposition of law, go so far as the query suggests. We have not found any comparable English decision, and the best statement of the principles applying to the class of houses you mention seems still to be that given in resolution 54 of the Central Valuation Committee, dated February, 1928.

5.—Water Act, 1945—*Stopcock outside curtilage—Maintenance.*

I think the reply to P.P. 11 at p. 398 overlooks the fact that sch. 3 to the Water Act, 1945, is not operative until an order has been made under s. 32 for the purpose of applying it to a particular water undertaking. According to a parliamentary answer, up to May 29, only twenty-six such orders had been made. COUNTRYMAN.

Answer.

This query has itself overlooked sch. 4 to the Act of 1945. Section 44 in sch. 3 is one of those incorporated by sch. 4 with the Public Health Act, 1936. It is only in local Act areas that it needs an order of the Minister to put it into force.

Printed by R. J. Acford Ltd., Industrial Estate, Chichester, Sussex, and published each Saturday by the Proprietors, Justice of the Peace Ltd., at the Office of the "Justice of the Peace and Local Government Review," Little London, Chichester, Sussex, England. Registered at the G.P.O. as a newspaper. Saturday, December 22, 1951. Price 2s. 3d. with Reports, post free 2s. 5d.; without Reports 1s. 3d., post free 1s. 5d. Subscription rates: £6 per annum with Reports; £3 10s. per annum without Reports.